

CEQA



THE PLANNING COMMISSION'S ROLE & RESPONSIBILITY IN THE EIR PROCESS

Camarillo Planning Commission

January 15, 2013

CEQA



Presented by

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Presentation

■ CEQA Overview

- Origins/Objectives
- Rules
- Participants
- Projects that require an EIR

■ The EIR Process

- Overview
- Impact Analysis
- Mitigation Measures & Alternatives
- Responses to Comments
- Certification
- Project Approval

CEQA Origins

- **1970: President Nixon signs National Environmental Policy Act (NEPA)**
- **1970: Governor Reagan signs California Environmental Quality Act (CEQA)**



CEQA Objectives

1. Protect the Environment

- Avoid/minimize environmental damage

2. Public Disclosure

- Provides an objective disclosure document
- Informs decision makers about the environmental consequences of the project
- Disclose to the public why decisions were made

CEQA Objectives

- City must identify the significant environmental effects of an action and then either

- ***Avoid*** those significant environmental effects where feasible;



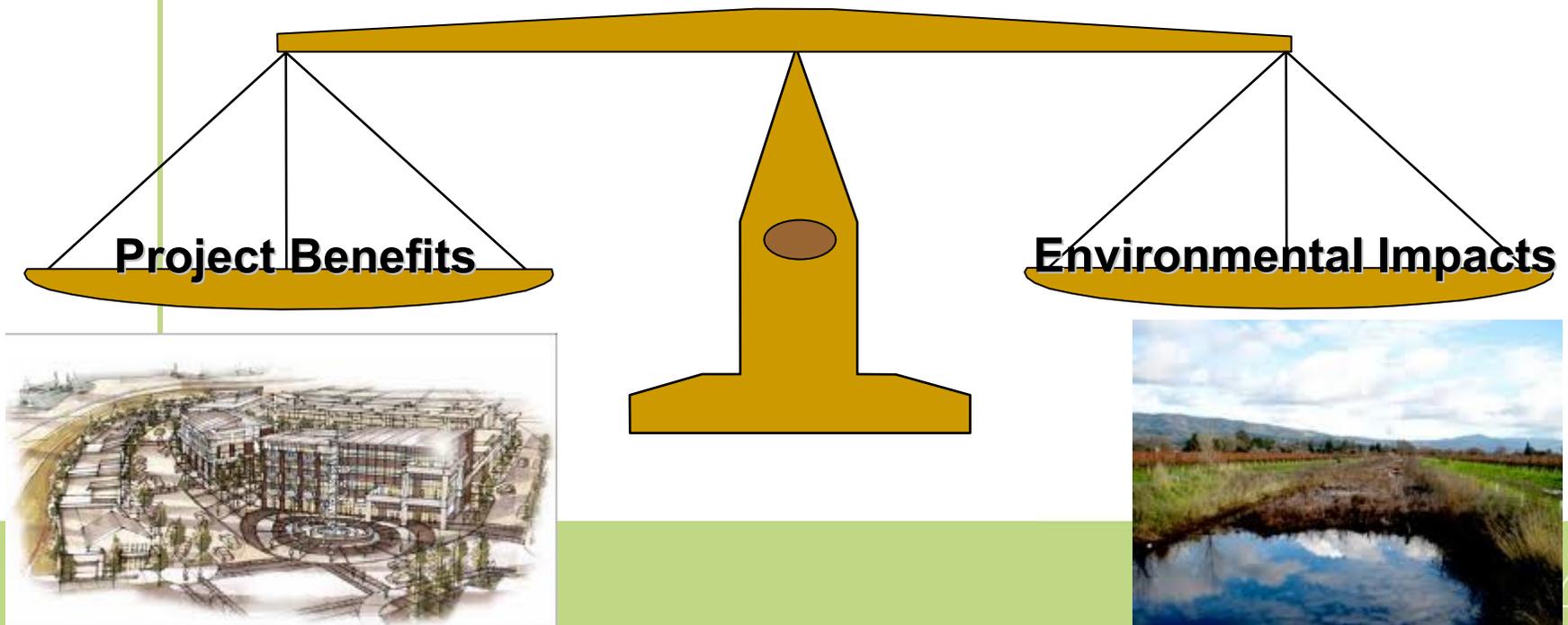
or

- ***Mitigate*** those significant environmental effects where feasible



CEQA Objectives

- Does not require that projects with significant impacts be denied;
- Provided the City finds economic, social or other conditions, justify approval



The Rules

■ The Act

- Public Resources Code § 21000-21178

■ The Guidelines

- California Code of Regulations, Title 14, §15000 et seq.
- Developed by Office of the Planning and Research

■ The Courts

- Case law

The Rules

- **The City**

- Guidelines and Procedures for Implementation of CEQA

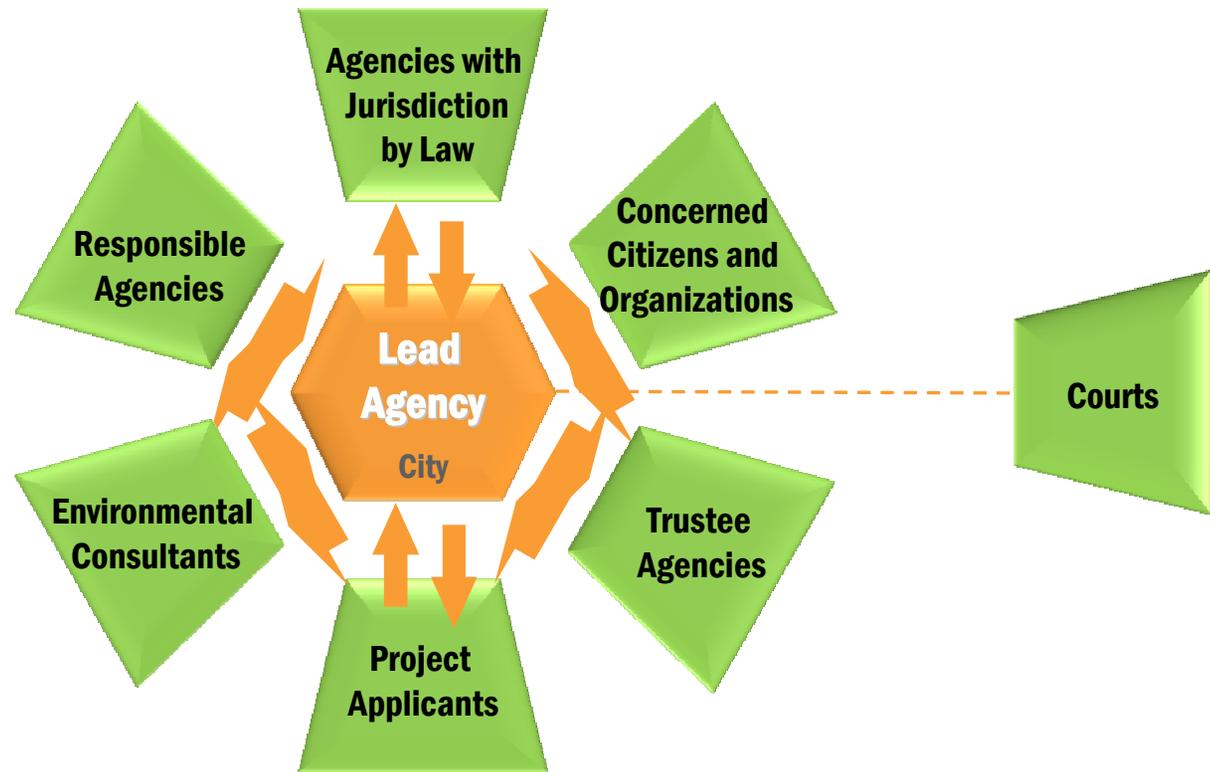
- **Other local, regional and state agencies**



CEQA Acronyms

- **NOE** **Notice of Exemption**
- **IS** **Initial Study**
- **NOP** **Notice of Preparation**
- **ND** **Negative Declaration**
- **MND** **Mitigated Negative Declaration**
- **EIR** **Environmental Impact Report**
- **NOA** **Notice of Availability**
- **DEIR** **Draft EIR**
- **FEIR** **Final EIR**
- **MMRP** **Mitigation, Monitoring and Reporting Program**
- **NOD** **Notice of Determination**

The Participants



CEQA Only Applies to Projects

- **“Project” means**

- ... an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (PRC § 21065)**

- **Requires agency discretionary approval**

A Project Requires an EIR...

When the Initial Study indicates that the project may have a “significant effect” on the environment.

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				

Determining Significant Effects

“Significant Effect”

- a substantial, or potentially substantial, adverse change in physical conditions (Reg. § 15382)



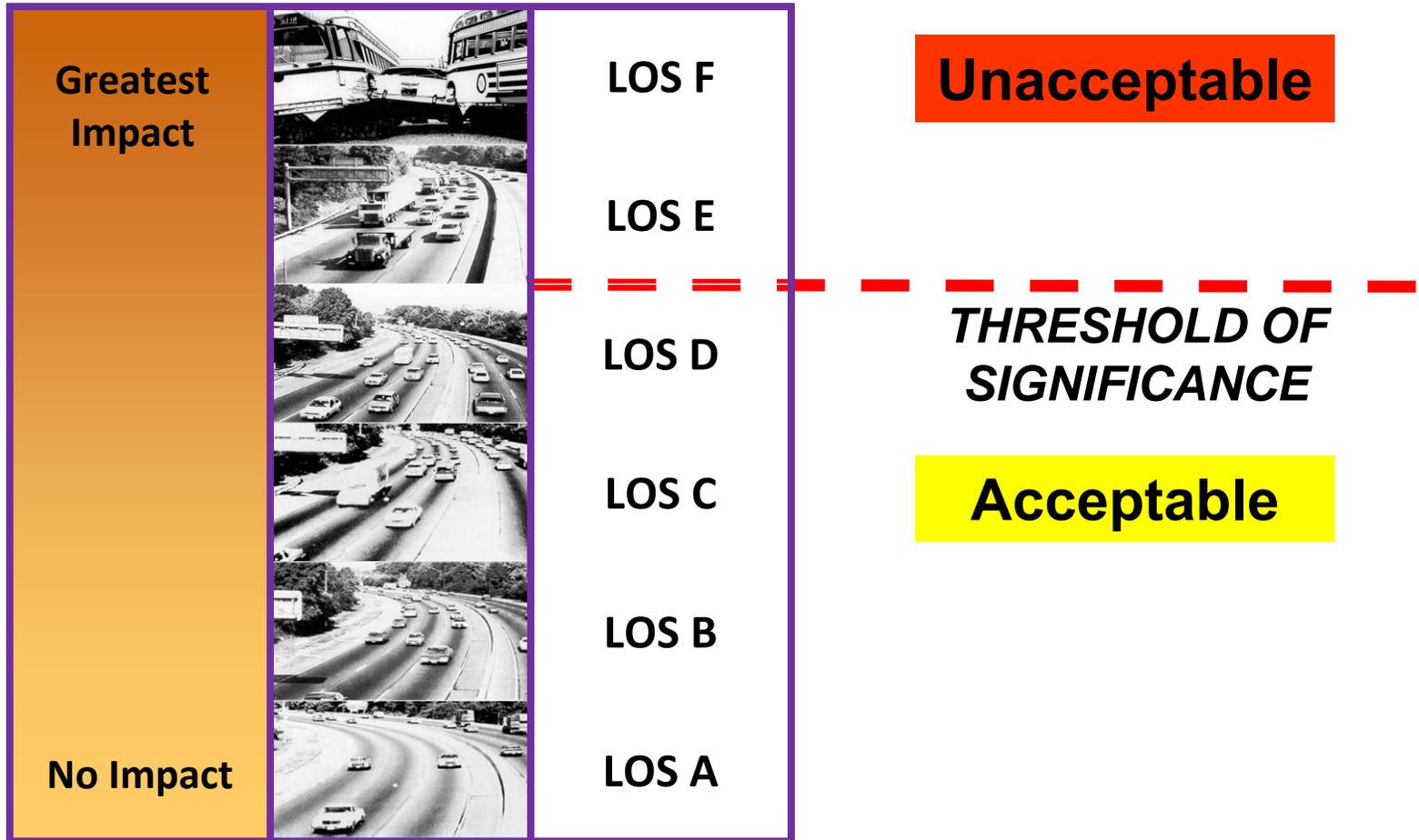
Porthole Pond before



Porthole Pond after

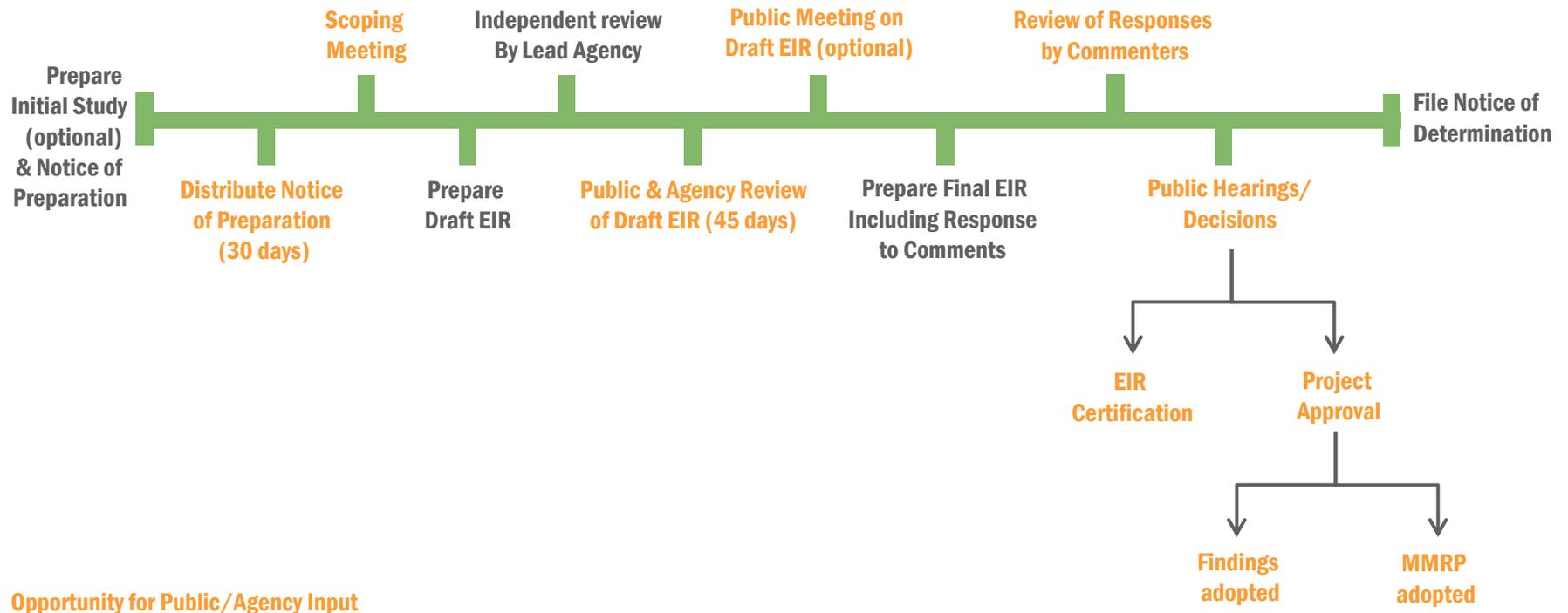
Determining Significant Effects

TRAFFIC EXAMPLE



LOS = Level of Service

Overview of EIR Process



Step 1: Scope of EIR

- **Establish scope of the EIR**
 - Issue Notice of Preparation
 - Conduct scoping meeting
 - Finalize scope of EIR

Step 2: Draft EIR

- **Prepare Draft EIR**
- **Notice of Completion/Circulate 45 days**
- **Collect public comments on DEIR**
- **Optional public meeting on adequacy of DEIR**

Step 3: Final EIR

- **Prepare responses to comments**
- **Circulate Final EIR 10 days**
- **Hold public hearing on EIR**
- **Certify EIR & adopt Statement of Facts and Findings, Mitigation Monitoring Plan**
 - Statement of Overriding Considerations

Note: Must certify EIR before taking action on project

The EIR: Typical Impact Analysis Issues

- **Aesthetics**
- **Agriculture & Forestry Resources**
- **Air quality**
- **Biology**
- **Cultural Resources**
- **Energy**
- **Geology/Soils/Seismicity**
- **Greenhouse Gas Emissions**
- **Hazards & Hazardous Materials**
- **Hydrology/Water Quality**
- **Land Use & Planning**
- **Mineral Resources**
- **Noise**
- **Population & Housing**
- **Public Services & Utilities**
- **Recreation**
- **Transportation/Traffic**

The EIR

■ Environmental Setting and Baseline

- Describe existing physical conditions
- Normally baseline for environmental analysis are the conditions at time of NOP
- The setting description should be no longer than necessary to support an analysis of the significant effects of the proposed project

The EIR

■ Impact Analysis

- Determine significance criteria
- Evaluate impacts
- Identify and recommend feasible mitigation measures for each impact



The EIR

- **Impact Analysis: How is it determined if the change is substantial?**
 - Define threshold
 - Determine net change
 - Assess if the change will exceed threshold

Degree of Impact

Mitigation required

Significance Threshold

Less than significant

The EIR

- **Impact Analysis: How is it determined if the change is substantial?**



The EIR

- **Impact Analysis:** Consider short- and long-term impacts for all phases:

- **Direct**

- Increased traffic
- Increased emissions



*Short-term:
Construction*

- **Indirect**

- Increase park use due to improved access

*Long-term:
Project Operation*



- **Growth-inducing**

- Access to previously undeveloped property

- **Cumulative**

The EIR

■ Cumulative Effects

- Incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects
- Effects that are individually limited but cumulatively considerable



The EIR

■ Impact Analysis: Substantial Evidence

○ Must be based on

- facts
- reasonable assumptions based on facts
- expert opinion based on facts

○ Does not include

- argument
- speculation
- unsubstantiated opinion
- erroneous information
- NIMBY

■ *Ms. Pink does not think solar panels should be developed*

■ *Mr. Smith does not think a stop light should be installed*

The EIR



■ How Much Detail?

- Assessment need not be exhaustive or include every conceivable study
- Level of specificity depends on degree of specificity of the project:
 - Construction project → very specific
 - General Plan amendment → less specific
- Tests:
 - Is there sufficient information and analysis to understand the basis for the impact finding?
 - Is there evidence of accepted standards or methodologies used to assess the impacts?

The EIR

- **Mitigation– required for all significant environmental impacts**

- **Avoid**
- **Minimize**
- **Reduce or eliminate over time**
- **Compensate**
 - Mitigation Bank



The EIR

■ Mitigation Measures

- Nexus
- In the public interest
- Roughly proportional to impact
- Feasible

100 new homes	=	New tot lot
	=	New stop light
	≠	New Art Museum

The EIR

■ “Feasible” Mitigation

- Capable of being accomplished within a reasonable time considering economic, environmental, legal, social, and technical factors (Reg. § 15364)

Feasible: Reduce vehicle trips by 10%

Infeasible: Eliminate all greenhouse gas emissions



The EIR

- **Mitigation Monitoring and Reporting Program (MMRP)**
 - Collection of all mitigation measures
 - Ensures compliance during project implementation
 - Must be enforceable through permit conditions, agreements or other measures
 - Provided as part of Final EIR; not required to be circulated with Draft EIR

The EIR

■ Project Alternatives

- Consider range of reasonable alternatives
- Mandatory alternatives
 - No Project alternative
 - Identify Environmentally Superior alternative

The EIR

■ Criteria for Selecting Project Alternatives:

- Must be feasible
- Must reasonably attain the basic objectives of the project
- Focus on alternatives capable of lessening the significant impacts



The EIR: Comments

■ Purpose of Public Review

- Share expertise
- Check accuracy
- Detect omissions
- Discover public concerns
- Solicit counter proposals/alternatives
(Regs. § 15200)

The EIR: Responses to Comments

- **Written responses to comments on DEIR**
- **Responses must include good-faith, reasoned analysis:**
 - Responses should state reasons for disagreeing with a comment
 - Conclusory responses unsupported by facts are not acceptable
 - City is not required to conduct every test or perform all research, studies or experiments requested.

The EIR: Responses to Comments

- Thorough responses provide full public disclosure
- Response to every comment not required – only to comments on significant environmental issues
 - (I don't like the color of the new center.)
- General response is sufficient for general comments

The EIR: Responses to Comments

■ Disagreements Over Data & Methodology

- City has discretion to weigh the evidence
- May accept conclusions of experts who prepared EIR (if based on substantial evidence)
- Existence of differing opinions based on same data does not make an EIR inadequate
- May reject comments from third party expert or regulatory agency (if based on substantial evidence)
- EIR should summarize the points of disagreement



The EIR: Responses to Comments

■ What is Substantial Evidence?

- Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even if other conclusions might also be reached.

(Reg. § 15384(a))



The EIR: Responses to Comments

■ Courts do not look for perfection

- Adequacy
- Completeness
- Good faith effort at disclosure

(Reg. § 15151)

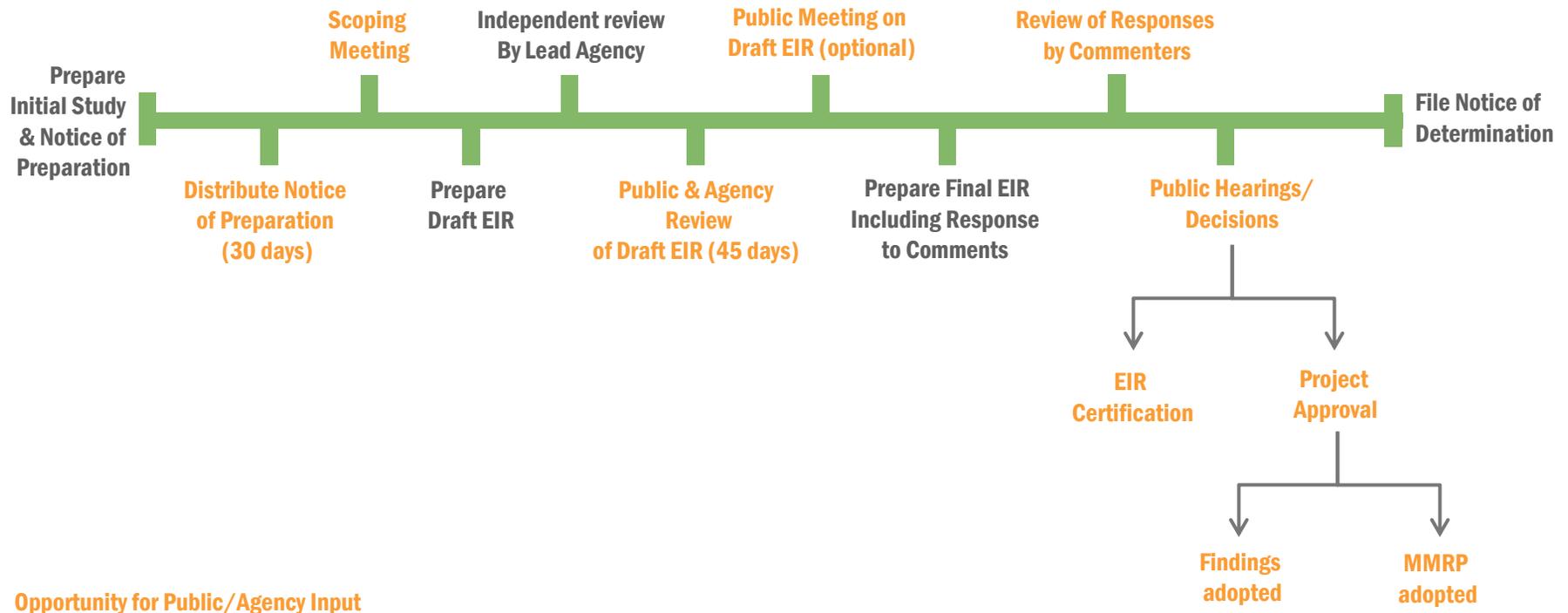
- ## ■ Courts will defer to City's factual conclusions if there is sufficient information to support the conclusion



The EIR: Responses to Comments

- No separate review period for comments required
- Comments may result in text revisions to Draft EIR
- Significant new information or changes to project in response to comments may require recirculation of EIR or affected portions (Reg. § 15088.5)
- Provide written responses to commenting agencies 10 days prior to certification

The EIR: Certification and Project Approval



The EIR: Certification

- **EIR Certification—Before approving a project, City must certify that the Final EIR:**
 1. Was reviewed and considered by the decision-making body
 2. Reflects City's independent judgment and analysis
 3. Has been completed in compliance with CEQA

The EIR: Certification

- **EIR Reviewed and Considered by the Decision-Making Body**
 - Cannot be delegated to subordinate body or officer
 - Does not require literal reading of every page
 - Reliance on written summaries and oral reports by staff acceptable



The EIR: Certification

- **EIR Reflects City's Independent Judgment**
 - Third parties may prepare EIR, but City must take responsibility for its contents
 - Ties in to the requirement of review and consideration by decision-maker



The EIR: Certification

- **EIR Completed in Compliance with CEQA**
 - No specific findings required
 - Standard for Adequacy:
 - Has the EIR been prepared with a sufficient degree of analysis to provide decision makers with information that enables them to make a decision which intelligently takes account of environmental consequences? (Reg. § 15151)

The EIR: Certification

- **EIR Completed in Compliance with CEQA**

Potential Challenges to Adequacy

- **Procedural Deficiencies**
 - Failure to provide proper comment period;
 - Failure to recirculate
- **Technical Deficiencies**
 - Incorrect baseline condition
 - Incorrect threshold of significance
 - Improper analysis of cumulative impacts
 - Cursory analysis of alternative

The EIR: Certification

- **Planning Commission Recommendation**
 - May recommend changes to EIR or further Council review if concerned about adequacy
 - Specify topic, analysis or response of concern



The EIR: Certification

- **Planning Commission Recommendation**
 - May recommend EIR is adequate for certification



EIR Certification ≠ Project Approval

- **Certification is a prerequisite to action on a project**
- **City has a duty to timely prepare, complete and certify an EIR**
- **EIR adequacy should not be used as a pretext to deny a project**
 - Certify EIR → Deny Project

Project Decision Making: Final Steps

■ Project Denial

- Project Denial may be based on
 - Significant, unmitigated environmental effects (Reg. § 15042)
 - Other laws and regulations applicable to project (e.g., compliance with General Plan, Zoning, and Development Standards)

■ Project Approval

- Findings
- Statement of Overriding Considerations

■ File Notice of Determination

Project Approval: Findings

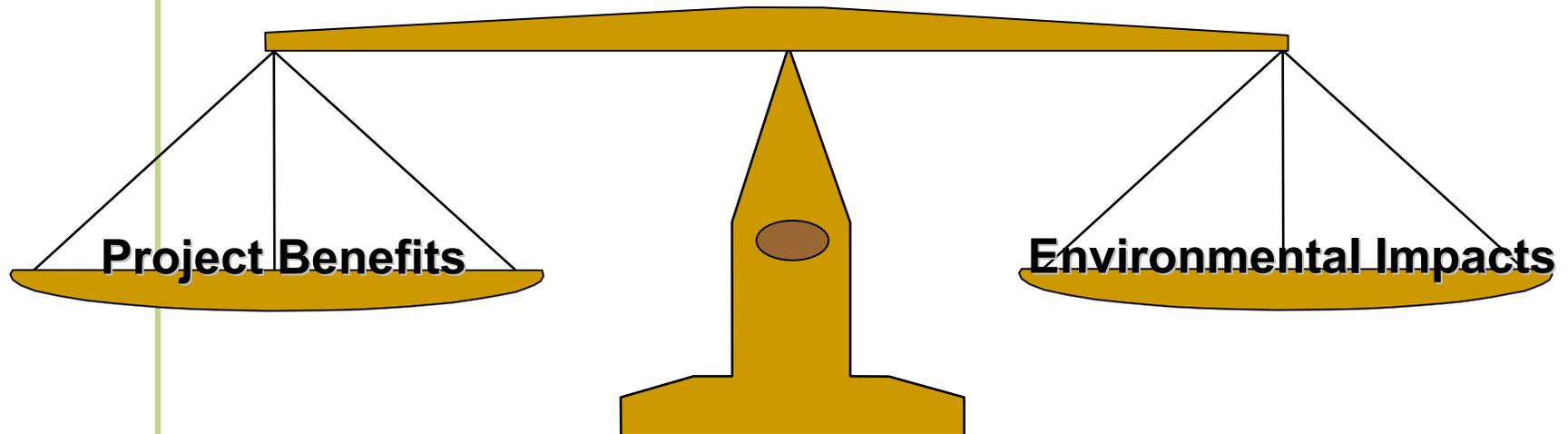
- The “road map” that explains the City’s decision
- For every significant impact of the project, City must find:
 - Project changed to avoid or substantially reduce impact; or
 - Specific economic, social, legal, technical, or other considerations make mitigation or alternatives infeasible; or
 - Changes are under the jurisdiction of another agency
- Findings must document the “substantial evidence” supporting the decision
 - **Impact:**
 - **Finding:**
 - **Facts:**

Project Approval: SOC

Statement of Overriding Considerations

- **City may approve a project that causes significant effects on the environment that are not avoided or substantially lessened only if:**
 - Makes a written statement of the specific reasons to support the action based on the EIR/record
 - The statement is supported by substantial evidence in the record
 - Reasons can be economic, legal, social, technological or other benefits

Statement of Overriding Considerations



Notice of Determination

- **Notice of Determination**
 - Filed with County Clerk
 - Within 5 working days of decision to approve project
 - Statutory form
 - Triggers 30-day period to challenge project approval under CEQA



Any Questions?



For More Information

- **CEQA Statutes & Guidelines**
<http://ceres.ca.gov/ceqa/>
- **California Governor's Office of Planning and Research (OPR)** *<http://www.opr.ca.gov/>*

Acknowledgments

Association of Environmental Professionals

The Planning Center