



# CEQA Basics

## Office of Historic Preservation

**Chico, CA**  
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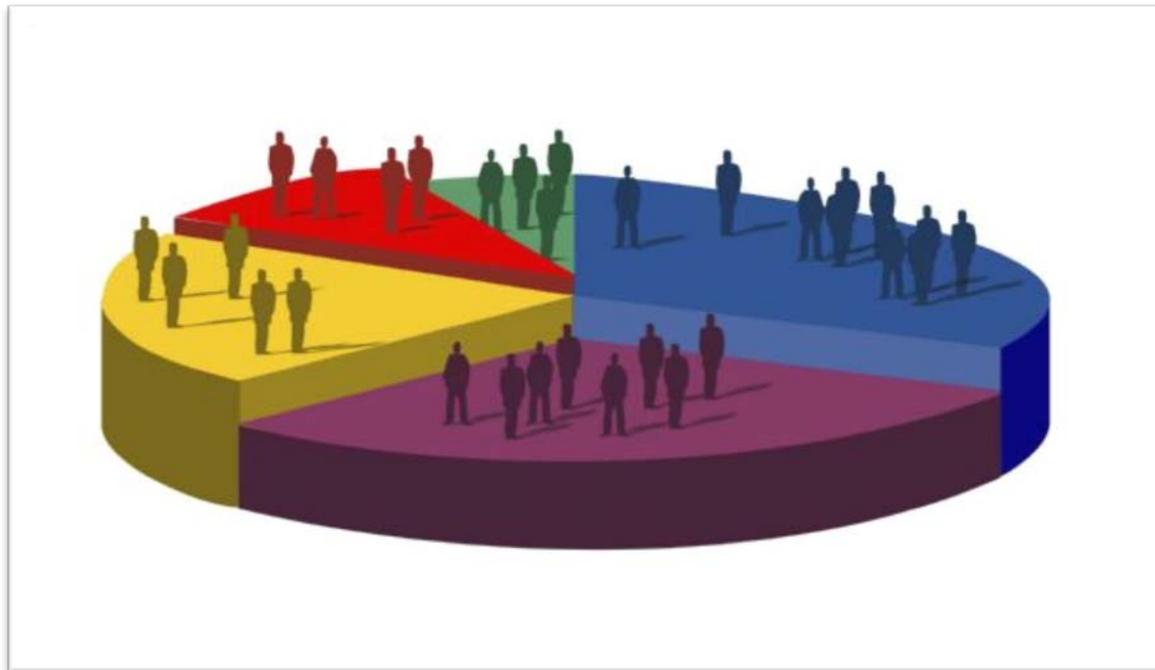
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# Course Objectives

- An overview of the CEQA process
  - Know more about CEQA: the process
- An overview of the local planning process
  - Introduction to the General plan and zoning
  - How does a development proposal move through the process?
  - Who are the local government officials?
  - Where does CEQA fit in?

# Overview

# The California Environmental Quality Act



## First: What is CEQA?

- *California Environmental Quality Act*. Is a state law that applies to discretionary actions by California agencies (state, regional, local):
  - Thousands of projects each year
  - Not all require an Environmental Impact Report (EIR)
- CEQA requires disclosure of potential significant impacts of an action before approval
- CEQA requires mitigation of any significant impacts
- CEQA itself is not a permit – it neither approves nor denies a project

## What Are CEQA's Objectives?

- Disclose to decision makers and 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
- Disclose to public reasons for agency approval of projects with significant environmental effects
- Foster interagency coordination in project review
- Enhance public participation in the planning process

# Who's Responsible for CEQA Compliance?

- California public agencies:
  - Doesn't apply to federal agencies or Native American tribes
- The agency undertaking or initially approving the project is the "lead agency" under CEQA:
  - CEQA applies to "discretionary" actions by public agencies
  - Ministerial actions are not subject to CEQA
- Typical local projects:
  - Adopting a general plan, specific plan, or amendment
  - Zoning action
  - Subdivision of land
  - Conditional use permit or variance
  - Lead Agency's capital improvements

# What Determines the Appropriate CEQA Approach?

- The lead agency determines the appropriate approach
  - Exempt?
  - Negative Declaration or Mitigated Negative Declaration?
  - EIR?
- Considerations:
  - CEQA, the CEQA Guidelines, and judicial opinions
  - Project characteristics and level of design
  - Professional judgment
    - Industry Standards – methodology
    - Expert opinion based on fact (“fair argument”)
  - Input from other agencies and tribes

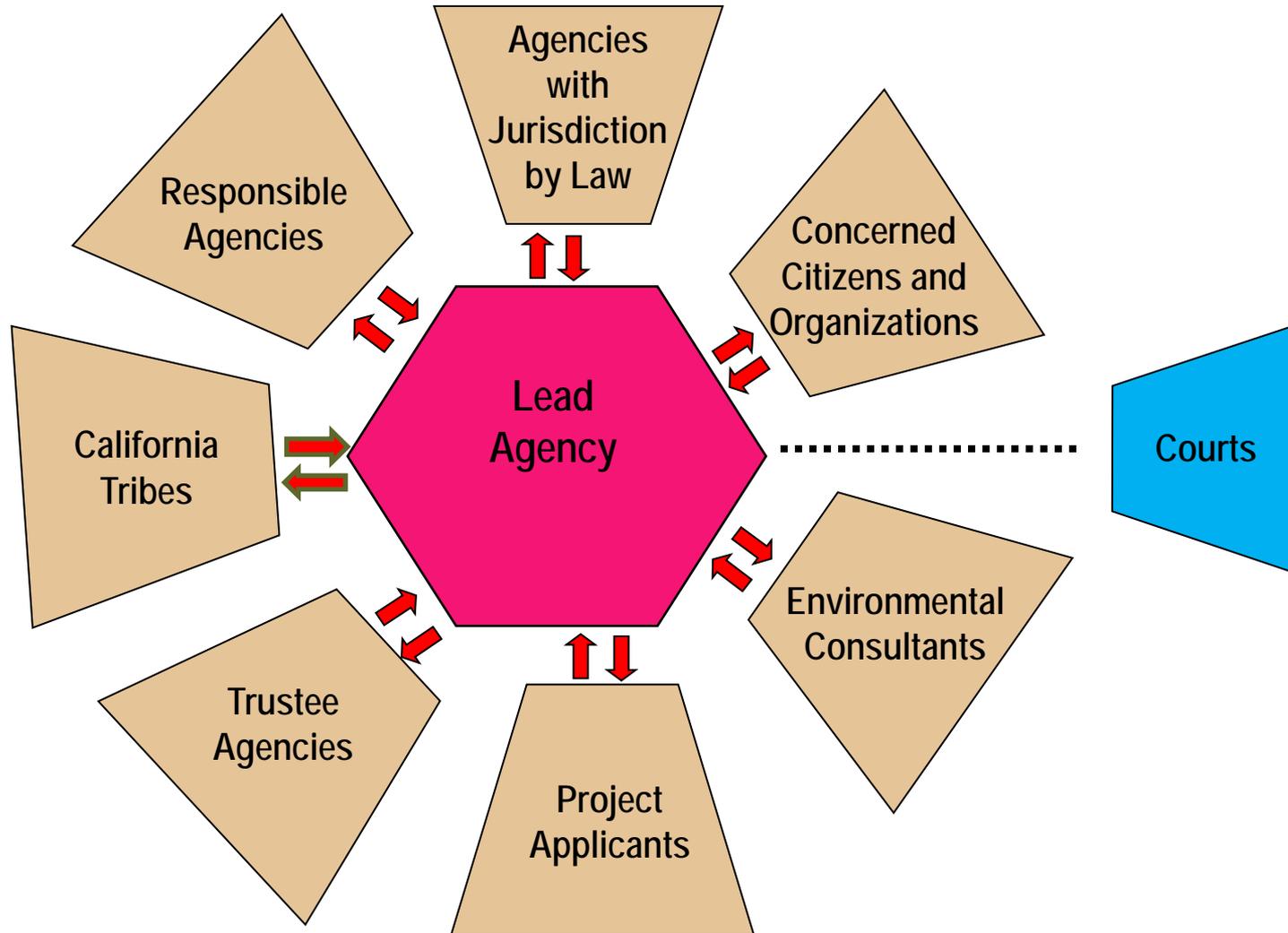
## Consultation is Part of CEQA

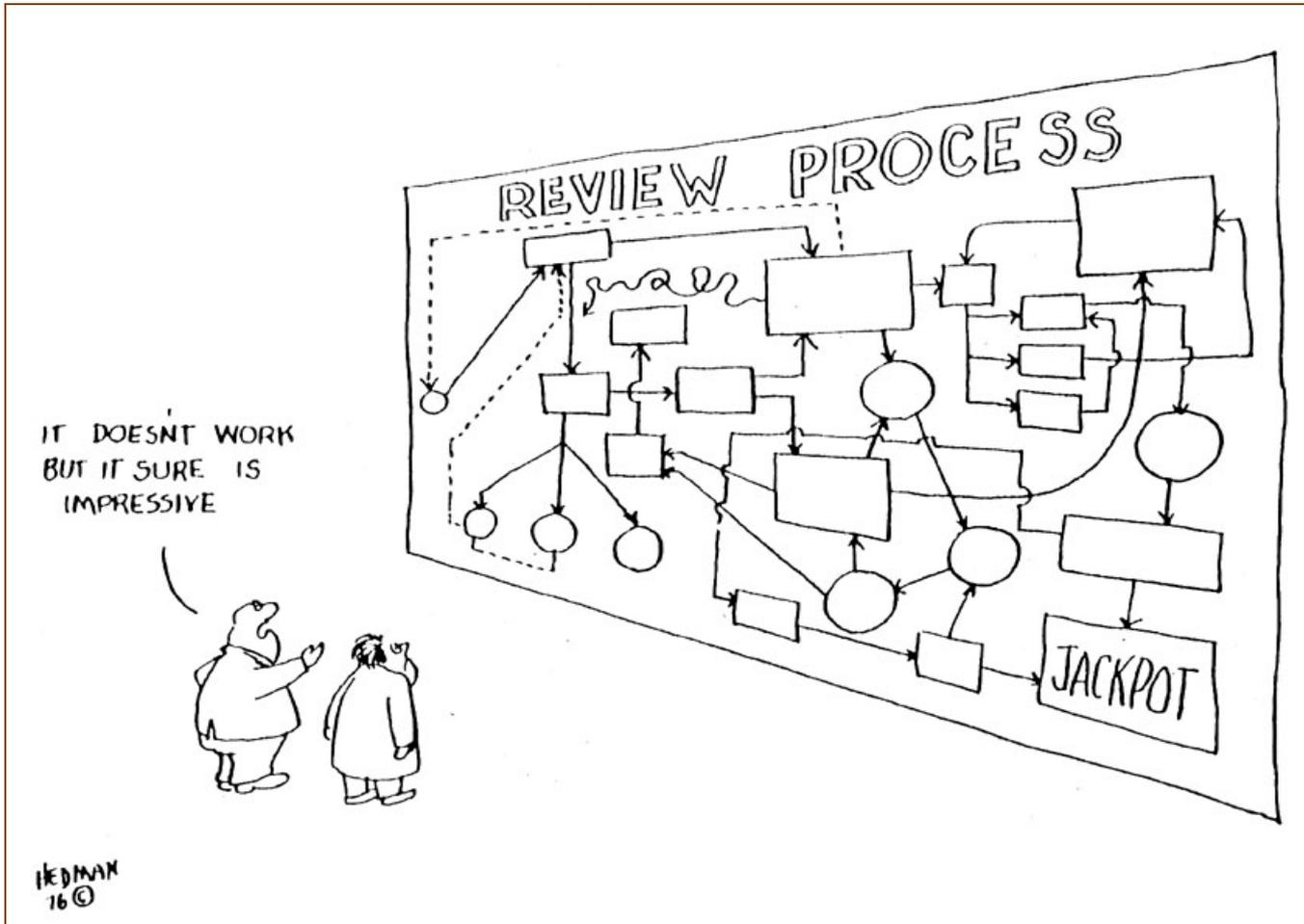
- The lead agency is obligated to consult with state and local agencies on NDs, MNDs, and EIRs
  - Draft NDs, MNDs and EIRs are available for public review and comment
  - A “notice of preparation” is released prior to writing a draft EIR and agencies and the public can comment on that as well
- AB 52 creates a new consultation requirement, but tribes can also comment outside the AB 52 process if they desire
  - Tribes can comment as members of the public, outside of AB 52
- Lead agency must consider the comments received
  - Comments are part of the administrative record
  - IF there is litigation, the arguments will be limited to items commented on in the record
- If an EIR is prepared, the Final EIR must respond in writing to all environmental comments

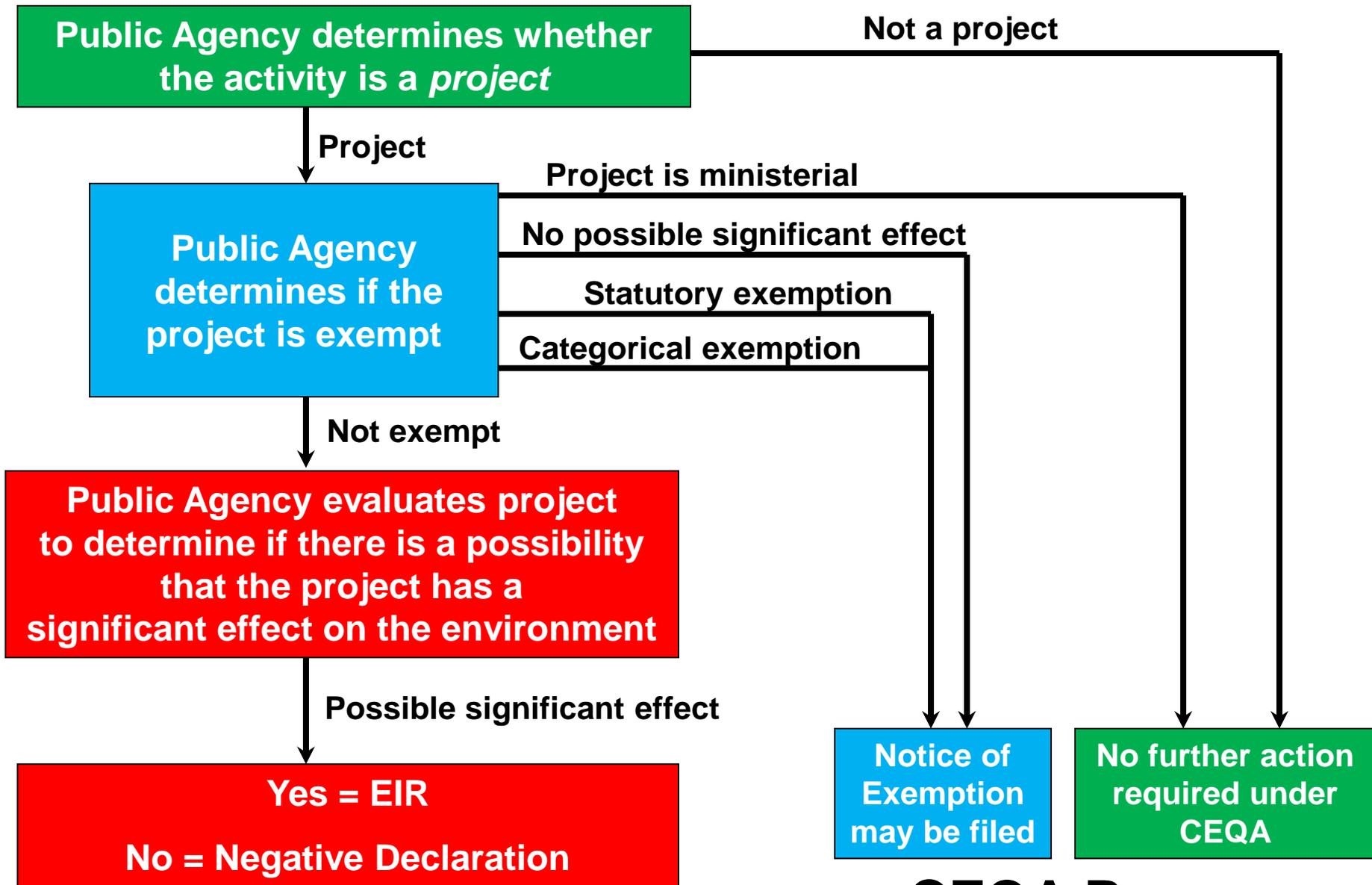
## Limits on CEQA

- CEQA requires identification and mitigation of potential significant effects, *but it doesn't stop a project*
  - With an EIR, a project may be approved even if it has significant, unavoidable impacts
- CEQA informs decision makers - it doesn't require them to make "good" decisions
- CEQA requires mitigation when feasible - it doesn't give the Lead Agency any new powers to do so
- Mitigation is limited by U.S. Constitution:
  - "Nexus" linking the impact to need for mitigation must exist
  - Project mitigation must be roughly proportional to its impact (i.e., fair share of total impact)

# Key Participants in the CEQA Process







## CEQA Process Flow Chart

# Phase 1. Applicability Review

- Is there a Project?
  - “Projects” covered by CEQA include any activity carried out, approved, or funded by a California public agency that may result in an **adverse physical change** in the environment, either directly or indirectly.
- If there isn’t a “project,” then CEQA doesn’t apply
  - CEQA does not apply to “ministerial” projects
- Minor projects may be exempt from CEQA – more about that in a minute

# Ministerial v. Discretionary Projects

- Ministerial: Little personal judgment; use of fixed or objective standards
  - Example: building permit
- Discretionary: Requires exercise of judgment or deliberation
  - Examples: conditional use permit, subdivision map
- Mixed Projects: Considered discretionary
  - Example: conditional use permit and building permit required

CEQA Guidelines secs. 15357 and 15369

# Is the Project Exempt from CEQA?

- Statutory Exemptions:
  - Ministerial projects
  - Emergency projects
  - Some require limited environmental review
- Categorical Exemptions:
  - 33 “classes” established by the CEQA Guidelines
  - Section 15300.2 exceptions
  - There are no “mitigated” exemptions
  - Filing Notice of Exemption

# Statutory Exemptions

- Created by law
- Vary widely in their application and the extent to which they actually exempt a project from CEQA review:
  - Ministerial projects – never subject to CEQA review
  - Emergency projects – must document the emergency, then can exempt actions
  - “Infill” project exemptions – numerous qualifiers (including impact on historic resources) must be met before one of these exemptions can be used

# Categorical Exemptions

- Established by State CEQA Guidelines
- Project must fit within one of the 33 classes of exemption
- A project consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties is exempt
- A project subject to *unusual circumstances* that indicate it may result in a significant impact doesn't qualify for exemption
- Categorical exemptions are not subject to public review and comment:
  - However, like any other part of CEQA, they are subject to legal challenge
  - With a local project, the city/county hearing notice will state whether the project is subject to a CE, ND, MND, or EIR

## When Does a Categorical Exemption Not Apply?

When a project may cause a substantial adverse change in the significance of a historical resource, as determined by the lead agency

*(Only one of several exceptions to categorical exemptions)*

Determination must be based on substantial evidence.

CEQA Guidelines Section 15300.2(f)





## When Does a Categorical Exemption Not Apply?

Where there is a reasonable possibility that the activity will have a significant effect on the environment due to *unusual circumstances*.

Two-Part Test for Exclusion:

1. Are there unusual circumstances?  
Determination based on substantial evidence.
2. Is there a fair argument for a significant impact?

CEQA Guidelines Section 15300.2(c)

# Special Provisions for Tribal Cultural Resources

- Public Resources Code Section 21084.2 states that “[a] project that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.”
- In plain language: “substantial adverse change” = EIR
- Disclosure, but not protection, is required:
  - Lead Agency must disclose and mitigate impacts
  - With an EIR, Lead Agency can approve destructive/damaging project
- CEQA protects sensitive cultural resources information from public disclosure – it’s not subject to the Public Records Act

## Phase 2: Initial Study

- If the project is not exempt, an Initial Study is prepared to determine whether to prepare ND, MND, or EIR:
  - It documents the determination
  - Includes pertinent technical studies: archaeo survey, historical buildings evaluation, biological surveys, etc.
- “Fair Argument” = factual evidence of a potential adverse impact:
  - Can it be *fairly argued* based on substantial evidence that the proposed project may have a significant impact?
  - A fair argument for significant impacts requires EIR to be prepared
- If the impact can be mitigated to a less than significant level, an MND can be prepared
- If there are significant, unavoidable impacts, an EIR must be prepared

## Appendix G – The Model Checklist

- CEQA Guidelines Appendix G model checklist for initial studies:
  - A model, not a mandatory checklist
  - Lead agency may adapt it to meet its needs
  - Because an environmental issue is not on the checklist does not mean it is not an issue for a given project
- Appendix G consists of a set of questions:
  - Intended to guide lead agency toward a comprehensive analysis
- Most lead agencies use the model checklist for their Initial Studies
- OPR is revising Appendix G to include questions on TCRs

## An Initial Study Checklist Should Consider:

- Whether there any known TCRs in the study area
- Whether there are likely TCRs in the study area
  - If the answers to above are no, then consider a Negative Declaration
- Whether the project would directly or indirectly adversely affect TCRs:
  - If no, consider a Negative Declaration
  - If yes, prepare an EIR unless the affect can be mitigated to a less than adverse level (Mitigated Negative Declaration)
- Mitigation measures to reduce or avoid the project's impact

## CEQA and TCRs

- TCRs are:
  - Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe
- TCRs are considered significant when:
  - Listed or eligible for listing on the California Register of Historical Resources
  - On a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution
  - The lead agency finds the TCR eligible for listing in the National Register of Historic Places

**Public Resources Code Section 21074**

## What Does Listing Do?

- Listing increases the resource's stature should there be a proposed project that may adversely affect it:
  - Remember that significant adverse effect = EIR
- It does not protect a resource if the proposal is not subject to CEQA
- Listing does not ensure that the resource will never be adversely affected:
  - With an EIR, the project may be approved even if the resource is destroyed
- Listing a resource does not itself trigger CEQA

Guidelines Section 15064.5

## Impacts under CEQA

- CEQA requires consideration of:
  - Direct impacts - Same time and place as project
  - Indirect impacts - May be different time and place
  - Cumulative impacts - Project's contribution to combined impact caused by effects of past, present, and reasonably foreseeable future projects
- *Impacts to cultural resources may fall into any of these categories*

## Phase 3: Prepare Neg Dec or EIR

- Negative Declaration, Mitigated ND, or EIR process must be completed before decision makers may approve a project
- The decision makers must consider the comments received during the CEQA document's review period
- All feasible mitigation measures must be made a part of project approval. For TCRs, these are at least:
  - Avoidance and preservation of the resources in place
  - Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to:
    - protecting its cultural character and integrity;
    - protecting its traditional use; and
    - protecting its confidentiality
  - Permanent conservation easements or other interests in real property
  - Protecting the resource

# Negative Declaration

- Negative Declaration or Mitigated ND:
  - Allowed only when there is no *substantial evidence* to support the argument that the project has the potential to cause a significant effect (no *fair argument*)
  - “substantial evidence” doesn’t include argument alone, opinion not based in fact, or clearly inaccurate information
  - Document’s conclusion is based on:
    - Initial Study,
    - Supporting studies, and other evidence in the record.
- Proposed ND/MND must be circulated for public review and comment for 20-30 days:
  - A project not involving any state agencies can be circulated for 20 days

# Environmental Impact Report

- An EIR is prepared when there is the potential for a significant effect that can't be reduced to a less than significant level
- An EIR includes:
  - In depth analysis of impacts and mitigations
  - A range of project alternatives, including No Project
  - Significant and unavoidable impacts, if any
- Notice of Preparation is circulated for comment for 30 days
- Draft EIR is circulated for public review and comment for 45 days
- Final EIR incorporates DEIR comments and written responses to the comments

## EIR - Alternatives

- EIR must analyze a reasonable range of alternatives
- Each alternative must:
  - Meet most or all project objectives,
  - Substantially avoid or reduce one or more significant impacts identified for the project, and
  - Be potentially feasible.
- Alternatives can include alternative locations or projects
- Alternatives can be analyzed at a lesser level of detail than the project
- Need not have an alternative for each project impact

## What Is a Mitigation Measure under CEQA?

Avoid	Avoid the impact altogether by not taking certain action or parts of an action
Minimize	Minimize impacts by limiting the degree or magnitude of the action and its implementation
Rectify	Rectify the impact by repairing, rehabilitating, or restoring the affected environment
Reduce or Eliminate	Reduce or eliminate the impact over time by preservation and maintenance during the life of the action
Compensate	Compensate for the impact by replacing or providing substitute resources or environments

# Effective Mitigation Measures

Five Questions to Ask	
<b>WHY</b>	State the objective of the mitigation measure and why it is recommended
<b>WHAT</b>	<ul style="list-style-type: none"> <li>• Explain the specifics of the mitigation measure and how it will be designed and implemented</li> <li>• Identify measurable performance standards by which the success of the mitigation can be determined</li> <li>• Provide for contingent mitigation if monitoring reveals that the success standards are not satisfied</li> </ul>
<b>WHO</b>	Identify the agency, organization, or individual responsible for implementing the measure
<b>WHERE</b>	Identify the specific location of the mitigation measure
<b>WHEN</b>	Develop a schedule for implementation

## Mitigation Measures

- CEQA mitigation measures must be feasible and fully enforceable
- The agency is obligated to monitor the implementation of mitigation
  - Mitigation monitoring or reporting program
- Mitigation is limited by Constitutional concerns
  - Nexus: there must be a project impact if mitigation is to be required
  - Mitigation must be roughly proportional to the project's level of impact (i.e., limited to fair share of impact)
- A Mitigated Negative Declaration cannot be released for public review and comment unless the project applicant has agreed to the mitigation measures
  - There's no such limitation on release of a draft EIR

# Mitigation

- “Deferred” mitigation is not allowed if the CEQA document is an MND:
  - Mitigation must be sufficiently detailed to reduce potential impacts
- Development of detailed mitigation can be deferred if the CEQA document is an EIR when:
  - Agency commits to mitigation by adopting the mitigation measure
  - The mitigation measure includes performance standards that describe how the mitigation will be refined and how it will be effective
  - Alternatively, the mitigation measure includes a menu of mitigations, with the specific mitigation to be selected from that menu in the future

# Monitoring Alone May Not be Adequate Mitigation

- Mitigation is to avoid, reduce, minimize, etc. impacts
- Simply monitoring impacts doesn't avoid or reduce them:
  - If monitoring is required, it must be part of a larger mitigation measure describing what will be done to reduce impacts if resources are encountered



# Project Approval

- Agency must adopt Negative Declaration or certify Final EIR *prior* to project approval:
  - Mitigation measures must be adopted as conditions of approval
  - With an EIR, must also adopt findings describing disposition of impacts
  - And, a statement of overriding considerations
  - A mitigation monitoring or reporting program is also required
- Final step: File a Notice of Determination:
  - Notice begins the 30-day statute of limitations for filing a lawsuit over the ND, MND, or EIR

# Reviewing CEQA Documents

- AB 52 consultation
- Informal consultation under CEQA



# Tribe's Role in Reviewing CEQA Documents

- Formal Consultation:
  - Per AB 52: early in the CEQA process *before* public release of draft CEQA documents
  - Face-to-face discussions can be discrete
- Informal Consultation: A tribe can always choose to *comment* on public draft CEQA document without invoking AB 52
  - Identify any submitted information that is to remain undisclosed

## AB 52 Consultation Request –

- Once the lead agency sends out requests for consultation:
  - Tribe has 30 days to request consultation
- Tribe can choose not to consult
  - Consider sending a courtesy response
- Lead agency must initiate consultation within 30 days of receiving tribe's request

# Finding Out What's Going On with a Project

- Because consultation begins before the CEQA document is drafted...
  - Reliant upon lead agency to provide project information
  - Preliminary analysis may or may not be completed by the agency when consultation begins
- Level of project detail varies:
  - Low level of detail: general plan amendment, zone change
  - High level of detail: conditional use permit, planned development

# A Few Words About Comments During the Public Review Period

- Be concise and be specific:
  - What specifically are your remaining concerns?
- Written comments are best:
  - Can be more comprehensive than verbal comments
  - Should include references, if applicable
  - Identify any materials that are sensitive and should not be publicly disclosed

# Commenting on a CEQA Document

- Effective comments:
  - Are concise, focusing on the document at hand
  - Speak to the project's potential for impact and effectiveness of mitigation measures
  - Explain why the TCR is eligible for the CRHR
  - Include supporting evidence/facts
  - Identify the specific part(s) of the document needing improvement

# Overview The Local Development Process



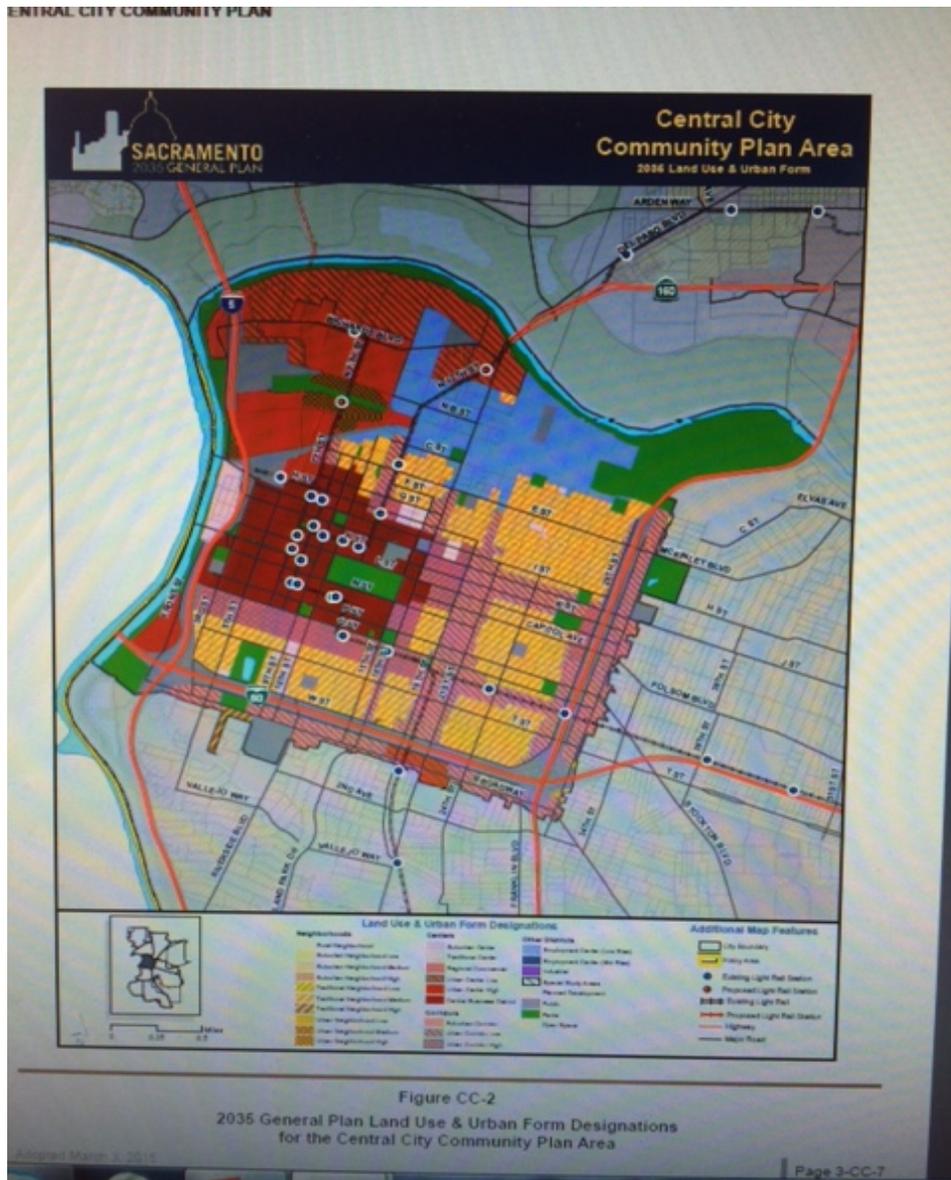
# Local Land Use Planning

- Cities and counties plan and regulate land use within their jurisdictions under their “police powers”
- State law provides a framework for the exercise of power, creating specific requirements and limitations
- Each city and county is an independent governmental entity
- Each city and each county has a unique general plan and zoning ordinance – *no two are alike*
- Three primary land use tools:
  - General Plan
  - Zoning Ordinance
  - Subdivision Ordinance

# General Plan

- Per state law, each city and each county must adopt a general plan with policies for the future development of its planning area, with the following elements:
  - Land use
  - Housing
  - Circulation
  - Open space
  - Conservation
  - Noise
  - Safety
- A city or county may also adopt any other elements it desires
- The General Plan
  - Text: describes land use policies
  - Diagrams: set out general locations for future land uses

# A Typical General Plan Map



## General Plan “Consistency”

- The General Plan is the city/county “Constitution” for land use policy
- “Community plans” and “specific plans” cover areas smaller than the general plan (general plan is jurisdiction-wide)
- Community plans, specific plans, and subdivisions must be consistent with the general plan
- In all counties (except San Francisco), in the City of LA, and in general law cities, zoning must be consistent with the General Plan

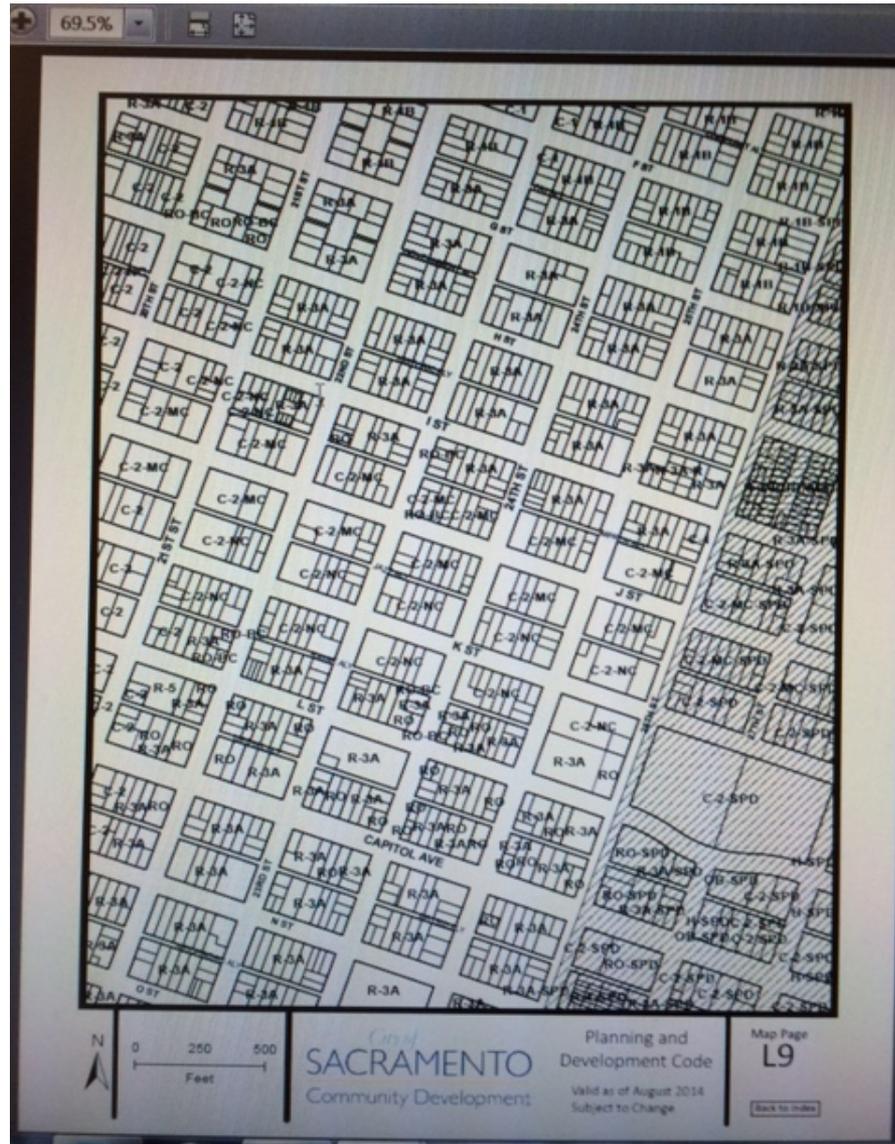
# General Plan

- Unlike zoning or subdivisions of land, a General Plan is a policy document and not a regulation
- Its policies are implemented through local land use regulations such as:
  - Zoning ordinance
  - Historic preservation ordinance
  - Subdivision ordinance
- General Plan adoption or amendment
  - Requires a public hearing
  - Is subject to CEQA review
  - Triggers separate SB 18 consultation with tribes

# Zoning Ordinance

- The zoning ordinance regulates the use of land. It typically sets out requirements for, among other things:
  - Building setbacks, height, and lot coverage
  - Minimum parcel size
  - Allowable uses on a given site
  - Uses allowable only with a discretionary permit
- Each parcel in the city or county has a specific zoning classification
  - Example: C-1-PD (commercial, planned development)
- Uses allowable “by right” under the zoning ordinance do not require a discretionary permit and are not subject to CEQA

# A Typical Zoning Map



## Zoning Ordinance (cont'd)

- Discretionary zoning actions include:
  - Conditional or special use permits
  - Zoning variances
  - Planned development
- A rezoning (zone change) is also a discretionary project; it requires approval by the city council or county board of supervisors
- Every discretionary zoning action requires a public hearing
- The exemption or the completed CEQA document will be considered at the hearing
  - This informs decision-makers and the public of the project's potential impacts (or lack of impacts)

## Subdivision ordinance

- Regulates the division of land for sale or long-term lease within the city or county
  - Based on the State Subdivision Map Act
- Approval of a subdivision map must precede the sale of new parcels
- Two basic kinds of subdivisions:
  - Parcel map: typically used to create 4 or fewer lots
  - Tentative map: typically used to create more than 4 lots
- Subdivisions are discretionary actions subject to CEQA review
- The exemption or the CEQA document will be considered at the public hearing on the subdivision map
- A tentative map will be granted *final* approval at a future time, when the required improvements are installed or bonded for installation
  - Approval of the final map is *ministerial* and not subject to CEQA

## “Development Agreement”

- A development agreement is a binding contract between the city/county and a developer
  - Gives developer a vested right to develop a specific project
  - Typically, a 20- to 30-year agreement
  - Can include concessions beyond usual mitigation or infrastructure
- A discretionary, voluntary agreement
  - Usually seen in larger projects or those with long build-out
  - Accompanies a development project (e.g., residential subdivision) through public hearing process
  - Subject to CEQA review along with development project
- Council or Board grants final approval of development agreement

## Local Government Hierarchy (typical)

- City Council or County Board Of Supervisors
  - Elected legislative body of the jurisdiction
  - Final approval of proposed legislative actions: general plan, zoning ordinance, specific plans, and amendments to same
- Planning Commission/Zoning Board
  - Appointed planning body
  - Approval of conditional use permits, zone variances, parcel and tentative maps (subject to appeal to council or supervisors)
  - Advisory recommendations re: proposed legislative actions (planning commission only)
- Planning Director
  - Approval of administrative permits
- Planning Staff
  - Worker bees

# Local Government Decision Making (typical)

- General Plan amendment/adoption
  1. Planning Commission holds a public hearing and makes recommendation
  2. City Council/County Board of Supervisors holds a public hearing and approves/denies
- Zone change
  - Same as General Plan amendment/adoption
- Subdivision Map
  1. Planning Commission holds a public hearing and approves/denies
  2. Council/Board approves Final Map later (ministerial action)
- Conditional Use Permit, Zone Variance
  1. Board of Zoning holds a public hearing and approves/denies
- Administrative Permit
  1. Planning director holds a public hearing and approves/denies

## Four Routes to Keeping Informed and Influential

- **SB 18:** Formal consultation with tribes on general plan/specific plan adoption or amendment
  - City/county must offer tribe opportunity to consult
- **AB 52:** Formal consultation with tribes during CEQA process
  - Tribe must request notice, then accept offer to consult
- **CEQA:** Review of and comment on draft ND, MND, EIR
  - Tribe may comment as member of public
- **Notice Request:** Any member of the public can request notice of all city/county planning activities that require public hearings (Gov. Code 65092)
  - Tribe can request this general notice

# Typical Steps for a Proposed Development Project



1. Application submitted to city/county planning dept.
2. Reviewed for completeness; applicant advised if application is complete for processing\*
3. CEQA process begins with initial study (unless project is exempt)
4. CEQA document drafted\*\*, released for public review, and finalized
5. Pertinent hearing body considers the project at a public hearing and approves or denies it
6. Decision of lower body may be appealed
  - Example: Council or Board hears appeals of Planning Commission decisions

\* AB 52 requires notice to tribes within 14 days of this step

\*\* AB 52 consultation should be completed by this step

## Proposed Development Project Hearing (typical)

- Pertinent hearing body considers the project at a public hearing and approves or denies it
  - Some projects require hearings before more than one body.
  - A controversial project may have several hearings
  - Final CEQA document is considered at the hearings; findings adopted with project approval
- City or County will post public notice in advance of the hearing(s)
  - Time and place of hearing
  - Projects to be considered
  - Type of CEQA document for each project
- Notice is mailed to nearby property owners and anyone who has requested notice

## Development Projects

- Private development projects are initiated by a developer/applicant
- City/county may or may not support the project
  - Approval is discretionary
  - Level of public interest depends on the project
- City/County may not have all the details about the project
  - CEQA can begin at early stage before design is well advanced
  - Some projects are general in nature
  - City/County expectations of developer/applicant vary; not all have the same standards for application completeness

# Tribal Involvement in Project Design

- Early involvement can be helpful when:
  - Developer/applicant is early in the design process
  - Developer/applicant is open to change
  - Tribe, developer, and agency recognize each other's concerns
- Not so helpful when:
  - Developer/applicant is wedded to project design or resistant to change
  - Developer/applicant is strongly invested in particular design
  - Tribe, developer, and agency don't recognize each other's concerns
- Early tribal involvement may or may not be productive
  - Every project's dynamics are unique to that project

## Notes on the Planning Process

- CEQA must be completed before a proposed development project may be considered for approval
  - Same for adoption or amendment of a General Plan, specific plan, or zoning ordinance
- AB 52 consultation extends the CEQA process
  - Consultation should be concluded *before* the draft CEQA document's released for public review
- The public hearing on the proposed development project or plan/ordinance will include the opportunity to comment on the project and the CEQA document
  - This offers the tribe another opportunity to comment on the adequacy of the CEQA document
  - For CEQA purposes, the administrative record remains open until public comment is closed

## Why Is the Administrative Record Important?

- In CEQA litigation, a court's review is limited to the “whole of the record” that was before the decision-makers
- The court relies on the record to reconstruct the activities and thought processes of the lead agency and to examine the evidence supporting the agency's decision
- “If it isn't in the record, it didn't happen.”
- Opportunities to contribute to the administrative record:
  - AB 52 consultation
  - CEQA comments during review periods
  - Comments at public hearing on the proposed project
- “Exhausting administrative remedies”
  - An issue can only be raised in CEQA litigation if it was presented to the agency as part of the administrative record

# Some Challenges in Local Government Consultation

- Who does the tribe consult?
  - Local government staff?
  - Planning commissioners?
  - Elected City Council/Board of Supervisors?
  - Include the private project applicant?
  - Include related consultants?
- Meeting with elected officials or commissions must comply with the Open Meetings Law (Brown Act)
  - Meeting with the Council, Board, or Commission requires public notice and is open to the public
  - Meeting with an ad hoc committee (less than quorum) may be an option
- CEQA schedule:
  - MND or Draft EIR must wait until consultation is completed
  - Further comments from tribe are part of the administrative record

## More Challenges

- State CEQA Streamlining Requirements
  - MND to be adopted in 6 months from start
  - EIR to be certified in 1 year from start
- The city/county can only mitigate to the extent of its powers and must be mindful of Constitutional limits on mitigation
  - Development agreement can go beyond Constitutional limits
- Agreement on how to document tribal concerns in the administrative record, while keeping sensitive information secure