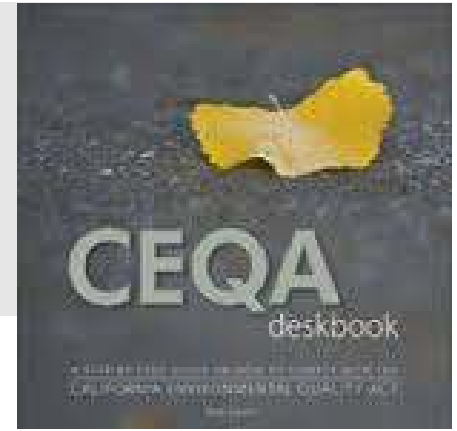


Get With the Program: Effectively Preparing and Using Program CEQA Documents



California AEP Conference

Tuesday March 24, 2015: Session Block 6, 11:00

Introductions

Moderator: Linda Klein
Cox, Castle & Nicholson LLP



Julie Moore
ESA



Terrence Grindall
Assistant City Manager, Newark

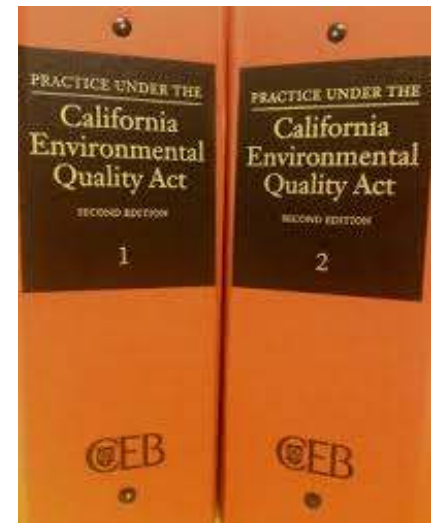


Christy Herron
ESA



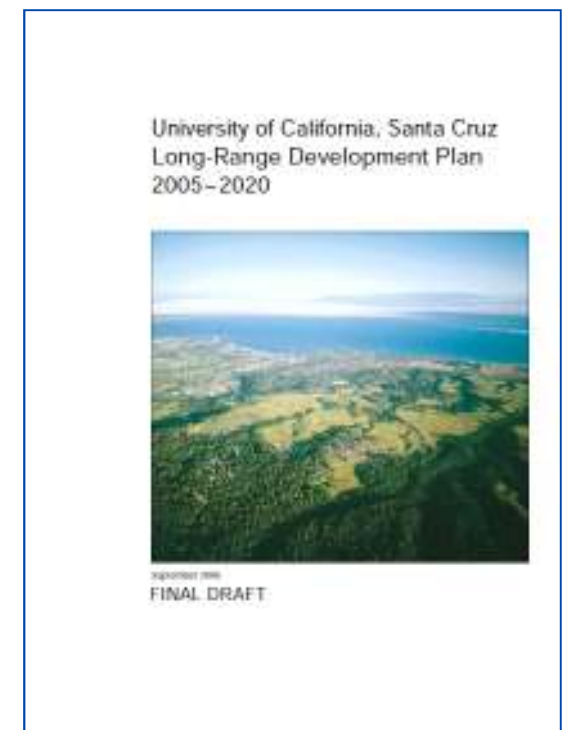
What is a “Program” Per CEQA?

- A “program” is *“a series of actions that can be characterized as one large project”* (Guidelines Section 15168(a)):
 - Geographically related,
 - Logical parts in a chain of contemplated actions,
 - Related by rules, regulations, plans, etc.
 - Activities carried out under the same authority, similar effects, similar mitigation



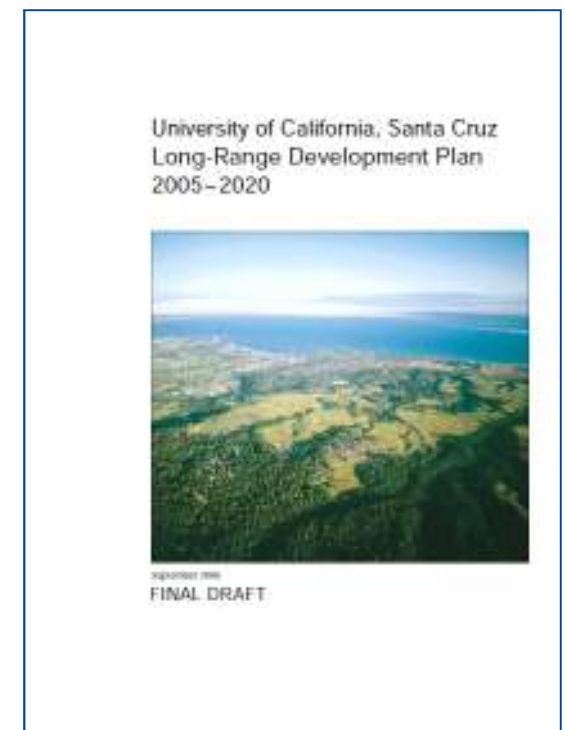
What is a Program EIR?

- CEQA: A program EIR is an EIR for a program.
- May be the only EIR, if sufficiently detailed
- May be first tier: broad policy alternatives, program-wide mitigation measures



What can a Program EIR do?

- Can allow deferral of project-level analysis
- Can be used with an Initial Study to determine if a later activity may have significant effects
- Can thoroughly cover: Cumulative Impacts, Broad Alternatives, Secondary Effects, and “*Regional Influences*”



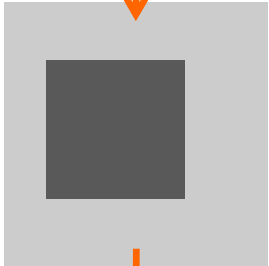
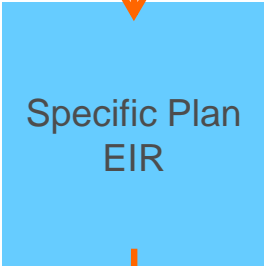
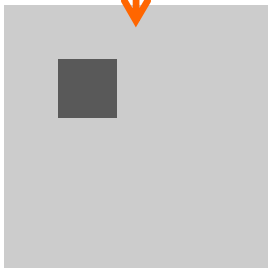



What is Tiering?

- Concept: Streamlined CEQA document builds on past analysis
- CEQA Guidelines Section 15152(B): *“Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration.”*
- Also, CEQA Guidelines Section 15385: *“Tiering is appropriate when the sequence of EIRs is:....From an EIR on a specific action at an early stage to a subsequent EIR or supplement to an EIR at a later stage.”*

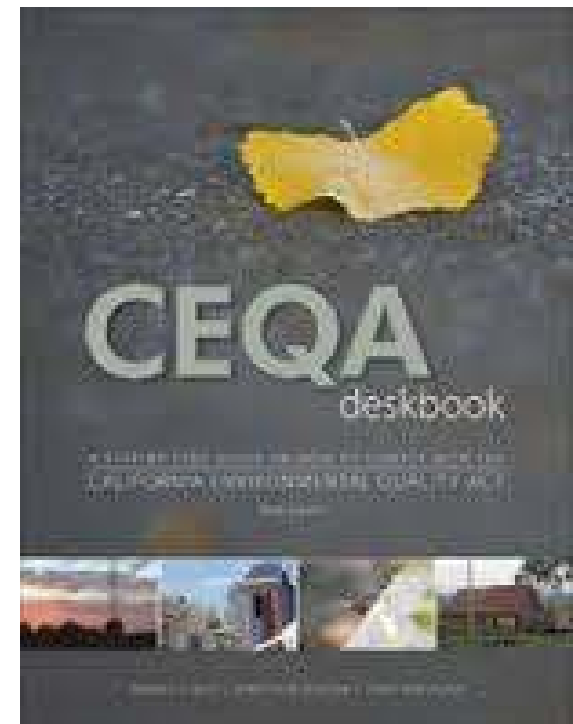


Example Tiering Under CEQA

Tier	Study Area	Document	Focus of Document
Tier 1			<ul style="list-style-type: none"> • Jurisdiction-wide setting • Jurisdiction-wide impacts (cumulative) • Jurisdiction-wide mitigation measures (policies and programs)
Tier 2			<ul style="list-style-type: none"> • Plan area setting • Plan area impacts • Plan area mitigation guidelines
Tier 3			<ul style="list-style-type: none"> • Project site setting • Project site impacts • Project site mitigation guidelines

Policy Behind Tiering

- CEQA Guidelines Section 21093(b): EIRs “shall be tiered whenever feasible.”
- Legislative findings:
 - Tiering promotes “construction of needed housing and other development projects”
 - Tiering streamlines, avoids repetition, focuses future EIRs
 - Helps agencies focus on issues “ripe for decision” at each level of review

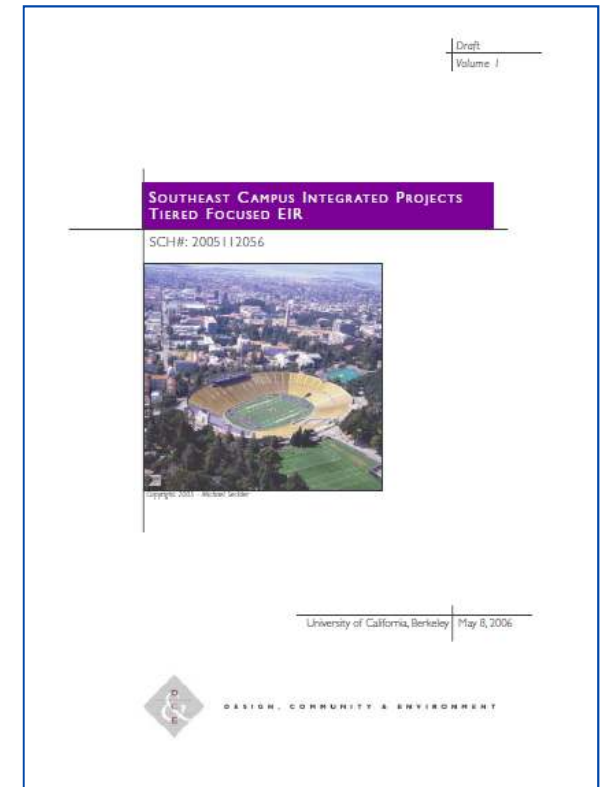


When Can Tiering Be Used?

To avoid another EIR, later projects must:

- Be consistent with the earlier program, plan, policy, or ordinance
- Be consistent with applicable general plans and zoning designations
 - Except where a zoning action required for a project would achieve or maintain general plan consistency*
- Not be subject to CEQA Statute Section 21166 (requirements for subsequent or supplemental impact report)

* Most kinds of rezones do not qualify



Process for Tiering

1. First things first: Is the project in the program?
 - Document this with checklist “or similar device”
2. Is project consistent with General Plan and zoning?
3. Did program EIR adequately analyze impacts?
 - Document this with Initial Study
4. Is the need for subsequent CEQA triggered?
5. Incorporate previous analysis/es by reference
 - Identify where previous documents can be reviewed
6. Concentrate on project’s significant impacts
7. Explain extent to which program-level mitigation measures address project impacts
8. State in your document that you are using tiering



Example Tiering Checklist

Aesthetics

<i>Environmental Factors for Determining Environmental Effect</i>	<i>Proposed Project Compared to the GPA EIR Project</i>				
	<i>Potentially New Impact – Further Investigation to be Undertaken</i>	<i>New Impact – Reduced to LS with New Mitigation Identified</i>	<i>No Change to Previous Impact, but New or Revised Mitigation Identified</i>	<i>No Change to Previous Impact or Mitigation Identified</i>	<i>Topic Not Previously Analyzed; No Impact or Less than Significant Impact</i>
1. AESTHETICS — Would the project:					
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Exemption for Housing: Government Code § 65457

To qualify for Government Code § 65457 exemption from CEQA's requirements:

1. Project must be for residential development,
2. Project must implement and be consistent with a specific plan for which an EIR was previously certified, and
3. No supplemental EIR is required under Public Resources Code § 21166 or such a supplemental EIR must already have been prepared and certified.

Some Tips for Program EIRs: It Helps to Be Specific

- CEQA Guidelines Section 15168(c)(5):
*“A program EIR will be **most helpful** in dealing with **subsequent activities** if it deals with the **effects** of the program **as specifically and comprehensively as possible.**”*
 - Tiering “does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project” (CEQA Guidelines Section 15152(b))
- Also, a Program EIR can include/embed a project-level analysis



Some Tips for Program EIRs: It Helps to Be Broad

- “Broad Envelope” Approach
 - Determine the maximum level of impact
 - In mitigation measures, adopt performance standards or objectives (such as “no net loss of coastal prairie habitat”) that can be used/scaled by future projects



Benefits of Using Program EIRs

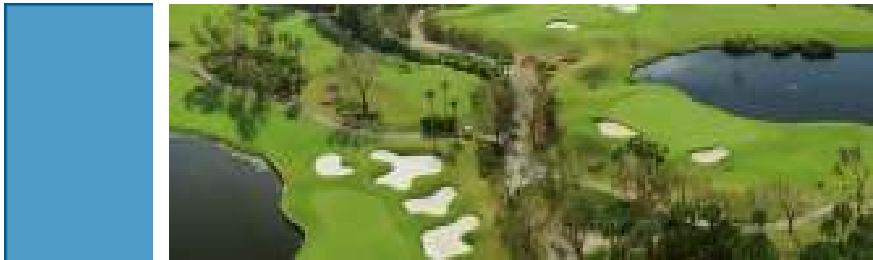
- Lead Agency has more flexibility at the program level (early stage)
- Avoids duplication and reduces paperwork
- More exhaustive, holistic consideration of impacts
- Possibly better consideration of cumulative impacts
- Don't need the same level of specificity as "project-level" EIR
- Whether a site-specific project is consistent with a program and program EIR is subject to substantial evidence standard, not fair argument (TI)



...And Possible Drawbacks

- Somewhat restricted: To avoid another EIR, later projects must not include a General Plan amendment, or most types of rezones
- In order for a program EIR to cover a later project, that project should be anticipated in the program
- Can get out of date quickly
- Uncertainty among CEQA practitioners, laypersons, decision-makers, even judges regarding program EIRs and tiering





Get With the Program:

Successfully Addressing
Common CEQA Claims
Related to Programmatic
Documents

California AEP Conference

Tuesday March 24, 2015 | Session Block 6 | 11:00 a.m.

Is it a Program EIR?

The development proposal for Treasure Island and Yerba Buena Island calls for up to 8,000 housing units amid 300 acres of protected open space. Existing elements that would remain include a Coast Guard station and a job-training center for youth.



Source: Treasure Island Development Authority

*Citizens for a Sustainable Treasure Island v.
City and County of San Francisco
(2014) 227 Cal.App.4th 1036*

Don't Read the Label



“Fact that [an] EIR is labeled a ‘project’ rather than a ‘program’ EIR matters little” for purposes of its sufficiency as an informative document. The level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason,’ rather than any semantic label accorded to the EIR.”

Citizens for a Sustainable Treasure Island v. City and County of San Francisco
(2014) 227 Cal.App.4th 1036, citing
Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners (1993) 18 Cal.App.4th 729.

Don't Look at the Contents

VOLUME 1

SUMMARY

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B.	Aesthetics.....	IV.B.1
C.	Population and Housing.....	IV.C.1
D.	Cultural and Paleontological Resources.....	IV.D.1
E.	Transportation.....	IV.E.1
F.	Noise.....	IV.F.1
G.	Air Quality.....	IV.G.1
H.	Greenhouse Gas Emissions.....	IV.H.1

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J.	Recreation.....	IV.J.1
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L.	Public Services.....	IV.L.1
M.	Biological Resources.....	IV.M.1
N.	Geology and Soils.....	IV.N.1
O.	Hydrology and Water Quality.....	IV.O.1
P.	Hazards and Hazardous Materials.....	IV.P.1
Q.	Mineral and Energy Resources.....	IV.Q.1
R.	Agricultural Resources and Forest Land.....	IV.R.1
V.	OTHER CEQA ISSUES.....	V.1
VI.	PROJECT VARIANTS.....	VI.1
VII.	ALTERNATIVES TO THE PROPOSED PROJECT.....	VII.1
VIII.	AUTHORS AND PERSONS CONSULTED.....	VIII.1

Guidelines provide that a lead agency may use EIR variations other than those listed in the Guidelines so long as they meet the content requirements discussed in Article 9 beginning with Section 15120. (Guidelines, § 15160.)

Citizens for a Sustainable Treasure Island v. City and County of San Francisco
(2014) 227 Cal.App.4th 1036

How about Subsequent Review of Projects in the Program?

When tiering from a program EIR, the key question is whether the project is within the scope of the program analyzed in the EIR, raising two questions:

- (1) How do you determine whether a subsequent project is “**within the scope**”?, and
- (2) What **standard of review** will courts use to evaluate an agency’s determination that a subsequent project is “within the scope”?



The Test

- Guideline 15168: If the agency finds that **pursuant to Section 15162**, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being **within the scope** of the project covered by the program EIR, and no new environmental document would be required.



The Test

- Guideline 15162: When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines one or more of the following: (1) substantial changes are proposed in the project that cause **new significant environmental effects or a substantial increase in the severity of previously identified significant effects**; (2) substantial changes occur with respect to the circumstances under which the project is undertaken that cause **new significant environmental effects or a substantial increase in the severity of previously identified significant effects**; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows **new or more substantial significant effects** not discussed in the previous EIR or negative declaration.

Within the Scope?



Can the City tier from its 1998 General Plan EIR when it updates its Housing Element in 2009?

New actions in Project (2009 Housing Element Update):

- (1) Increase the minimum residential densities in seven General Plan areas from 10 to 20 residential units per acre,
- (2) Increase the permitted density for 8 multi-family sites,
- (3) Amend zoning to allow emergency shelters and transitional, supportive, and farm worker housing,
- (4) Amend zoning to require a use permit for conversion of certain types of stores and to provide for “co-housing,” and
- (5) General Plan and zoning amendments to permit single family detached homes at the same densities as single family attached homes.

Within the Scope?

YES

Latinos Unidos de Napa v. City of Napa
(2013) 221 Cal. App. 4th 192

Within the Scope?

A 2002 Specific Plan EIR analyzed 2 million square feet of office space, 70,000 square of ancillary retail space, and 1,500 high-density dwellings. According to the EIR, the “Site” was to include a maximum of 405 high-density dwelling units and up to 25,000 square feet of retail space. The EIR stated that “additional environmental review would occur at each of [subsequent stage] of the project.” Greenhouse gas emissions were not analyzed.

In 2011, a developer proposes 505 high-density units with no retail space on the Site. The developer states that the ground-floor units would be constructed in a way that they could be returned to retail in the future.

Within the scope?



Within the Scope?

YES

Concerned Dublin Citizens v. City of Dublin
(2013) 214 Cal. App. 4th 1301

Exempt?

Government Code section 65457 provides an exemption from environmental review for a residential development that is consistent with a broader specific plan for which an environmental impact report previously has been certified, provided that if an event listed in 21166 (*hint—this is the same as Guideline 15162*) has occurred, the exemption doesn't apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified.

Concerned Dublin Citizens v. City of Dublin
(2013) 214 Cal. App. 4th 1301

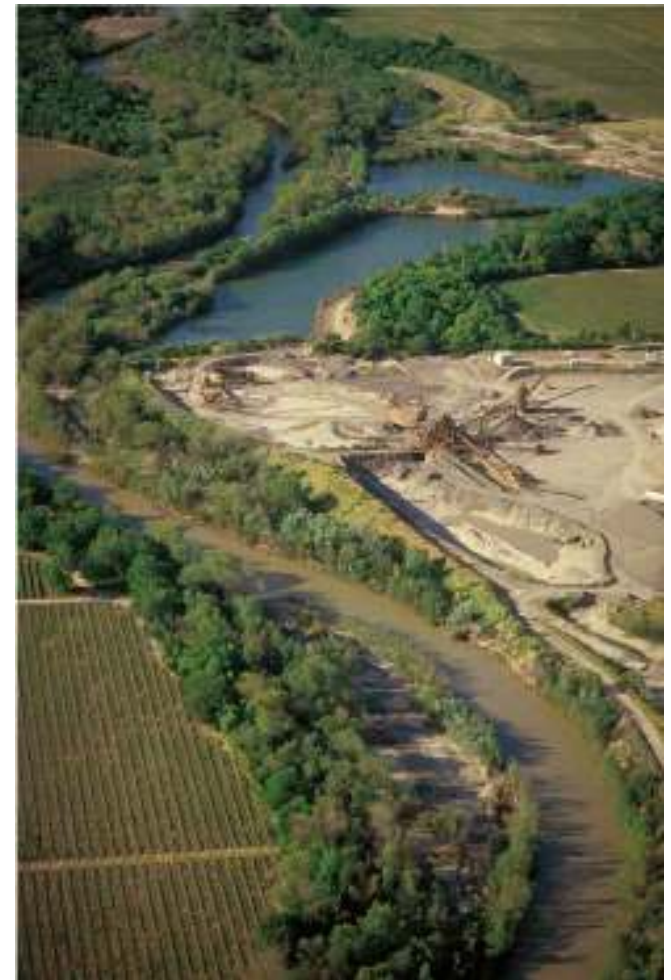
Exempt?

YES

Concerned Dublin Citizens v. City of Dublin
(2013) 214 Cal. App. 4th 1301

Within in the Scope?

- 1981: the County adopted a program EIR for an aggregate management plan for regulating mining. The plan designated areas for mining or preservation based on land's value for agriculture and groundwater recharge.
- 1989: Owner applied to amend the plan by swapping 145 acres of “mining” land for an equal number of “agricultural” land along the river and a use permit to mine 50 acres.



Within the Scope?

No!

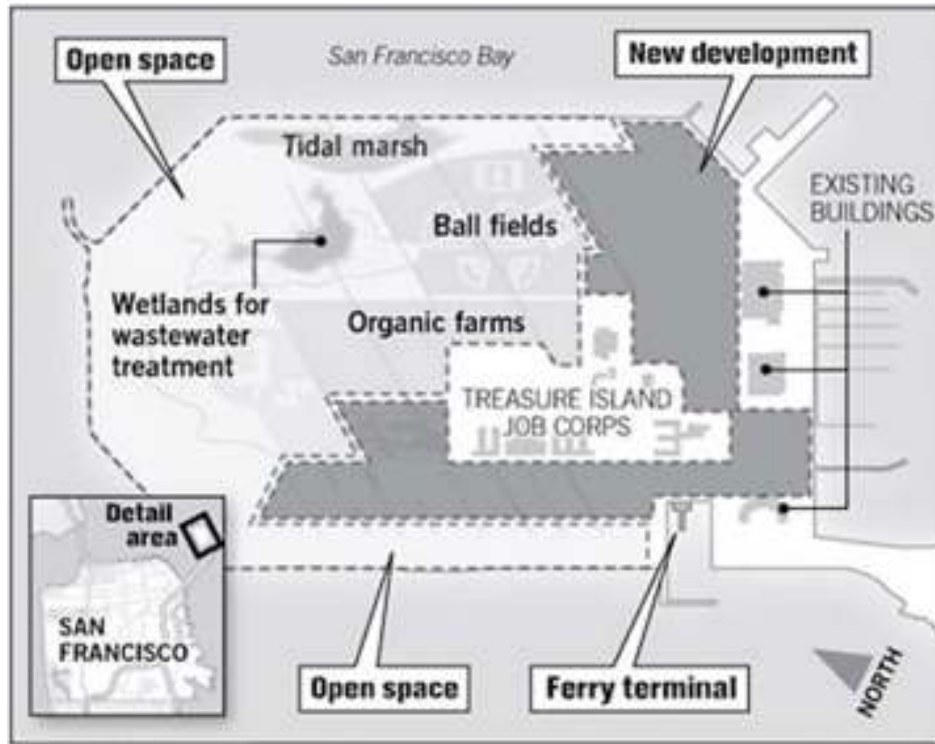
Sierra Club v. County of Orange
(1992) 6 Cal.App.4th 1307

Now Let's Look at the Standard of Review



Sierra Club v. County of Orange: The “fair argument standard” applies because it appears “that [the Legislature] intended to establish a similar low threshold for an agency's determination whether to prepare a new EIR on a later new project which follows certification of a program or plan EIR.”

Looking Again at the Standard of Review



The **same substantial evidence standard applies** to subsequent environmental review for a project reviewed in a program EIR or a project EIR.

Citizens for a Sustainable Treasure Island v. City and County of San Francisco
(2014) 227 Cal.App.4th 1036

Looking Yet Again at the Standard of Review



vs.

Bold and green

The development proposal for Treasure Island and Yerba Buena Island calls for up to 8,000 housing units amid 300 acres of protected open space. Existing elements that would remain include a Coast Guard station and a job-training center for youth.



Source: Treasure Island Development Authority

John Blanchard / The Chronicle

Any Differences?



When tiering, an agency needs to determine whether the subsequent project is within the scope of the one analyzed in the program EIR, and do so using a checklist. (14 Cal. Code Regs. § 15168(c)(4).)

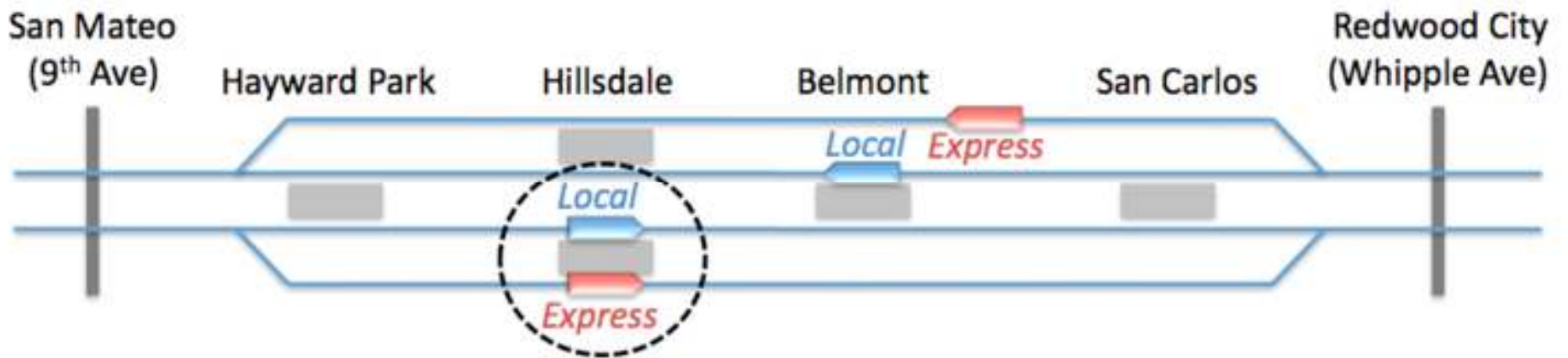
Another Difference?

Deferred Analysis



Town of Atherton v. California High-Speed Rail Authority
(2014) 228 Cal. App. 4th 314

No Need to Analyze Everything



“The revised final PEIR/EIS properly deferred detailed analysis of the impacts of the vertical alignment in the Belmont-San Carlos-Redwood City area to the second-tier project EIR.”

Town of Atherton v. California High-Speed Rail Authority
(2014) 228 Cal. App. 4th 314

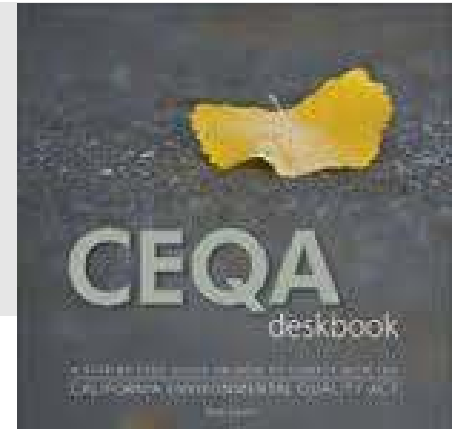
Aren't there Other Concerns when Choosing to Prepare a Program EIR?

In addition to the law, there are many other important concerns, including:



Master Planning





CEQA: An approach to securing SRF Funding for Your Master Plan CIP



California AEP Conference

Tuesday March 24, 2015: Session Block 6, 11:00

Thanks to the project team...

West County Wastewater District	E.J. Shalaby - General Manager Ken Cook - Engineering Services Manager	
State Water Resources Control Board	Christopher Stevens SWRCB SRF Staff	
Carollo Engineers	Andre Gharagozian Steve Swanback Katy Rogers	
ESA	Julie Moore Jim O'Toole	

How can you use CEQA tiering and environmental review to streamline CWSRF funding for a Master Plan program?

Agenda

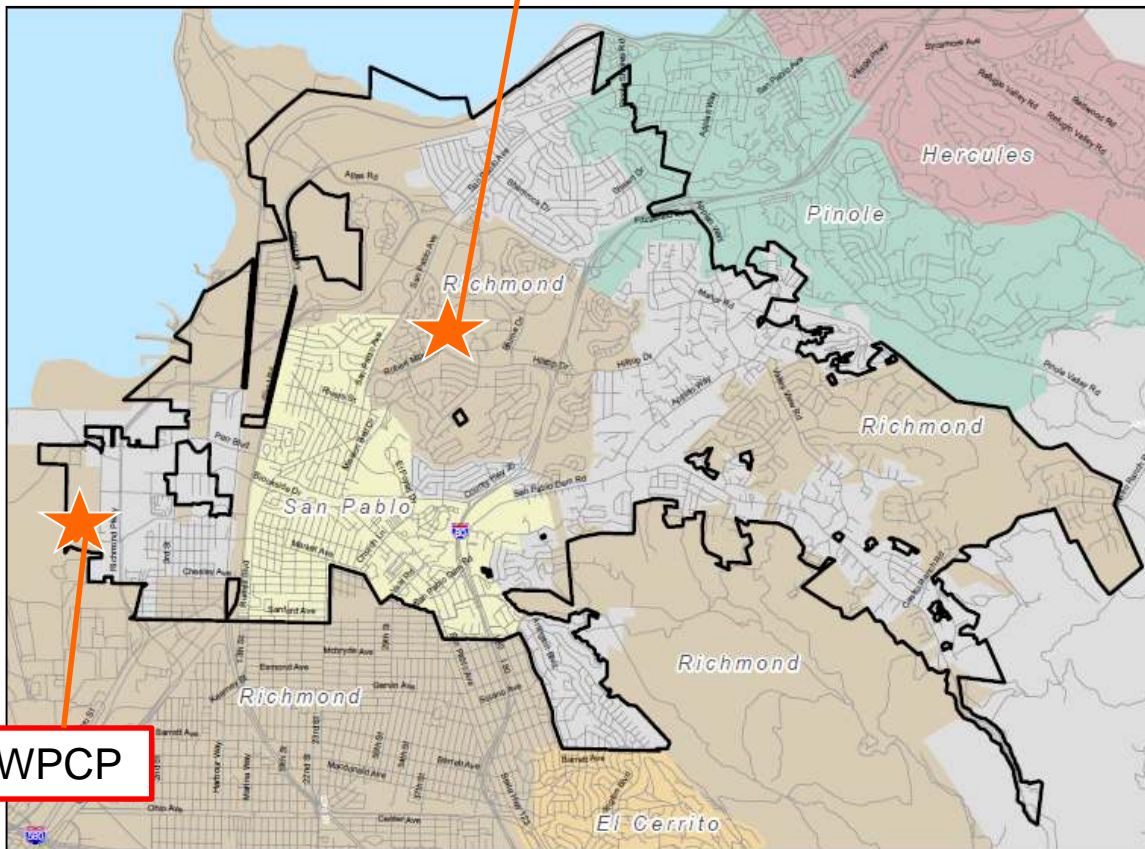
- Background WCWD Master Plan
- What is SRF Funding? What is needed?
- How CEQA approach coordinated with SRF applications
- 1st SRF Application - CEQA: Exemptions
 - Streamline environmental review with preliminary environmental screening
- 2nd SRF Application - CEQA: Program/Project EIR
 - Project-level analysis within Program EIR
- 3rd SRF Application – CEQA: Addendum
 - Site-specific analysis of program elements

West County Wastewater District provides wastewater collection, treatment, and disposal for 93,000 people in Western Contra Costa County



The service area includes the Cities of Richmond, San Pablo, and portions of unincorporated Contra Costa County

Administration and Collection
System Operation Building



- 17 sq miles
- 249 miles of sewer
- 17 lift stations
- Flows range from 7 to 70 mgd

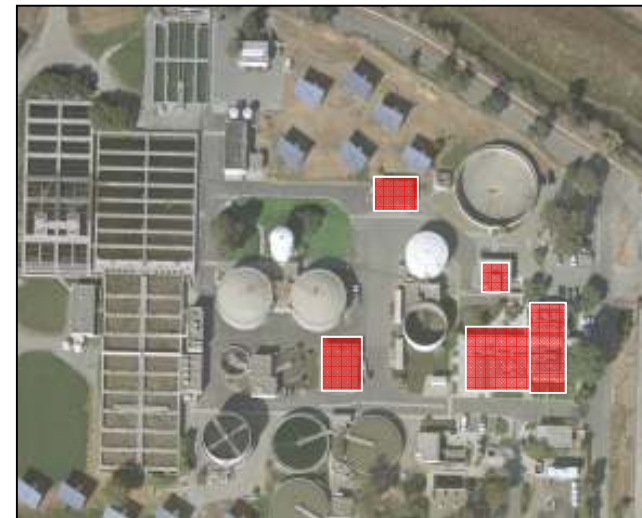
WCWD conducted a Master Plan to assess the ability of existing facilities to meet long term needs and develop a comprehensive 20-year CIP



Collection system

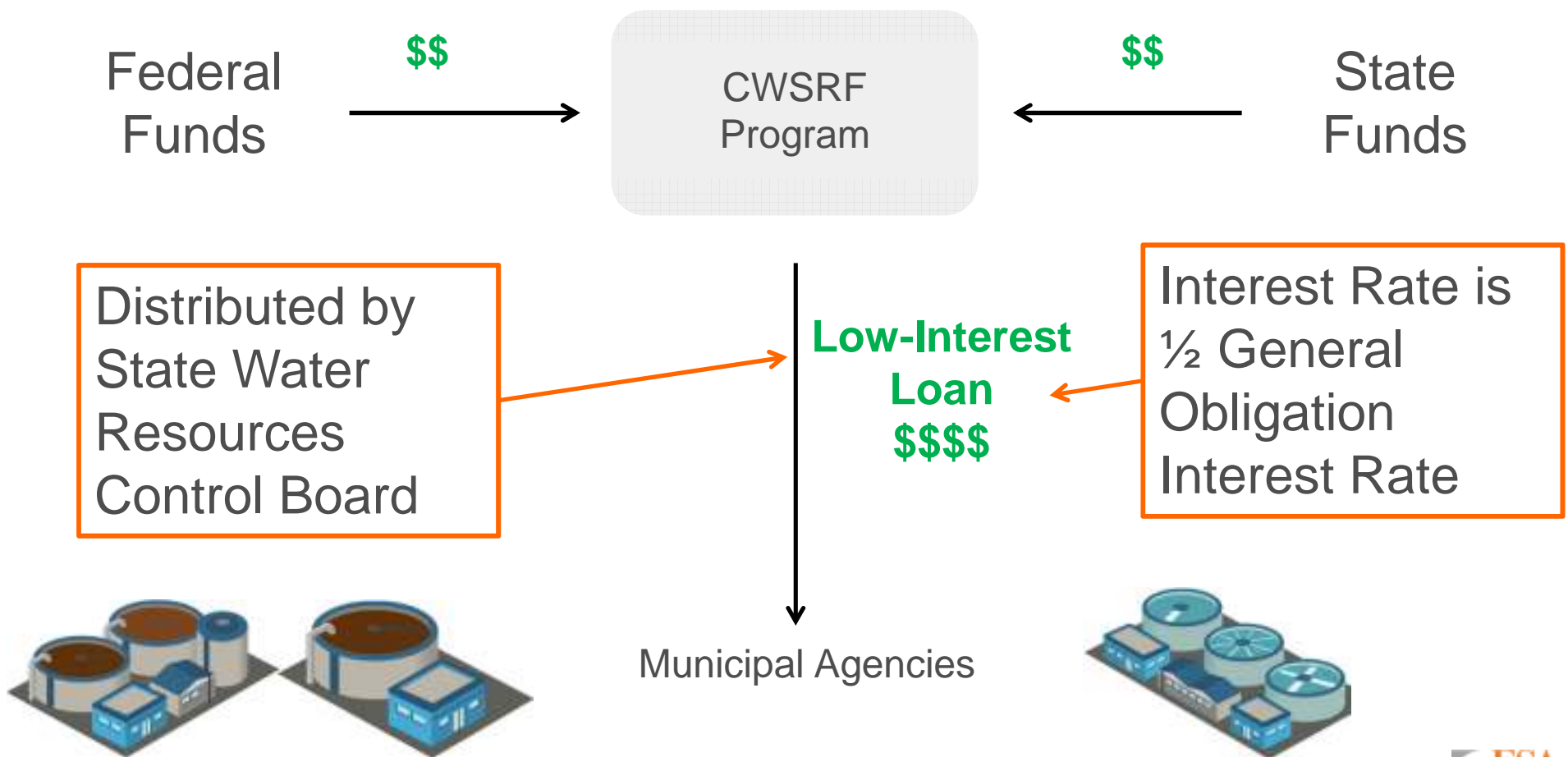


WPCP

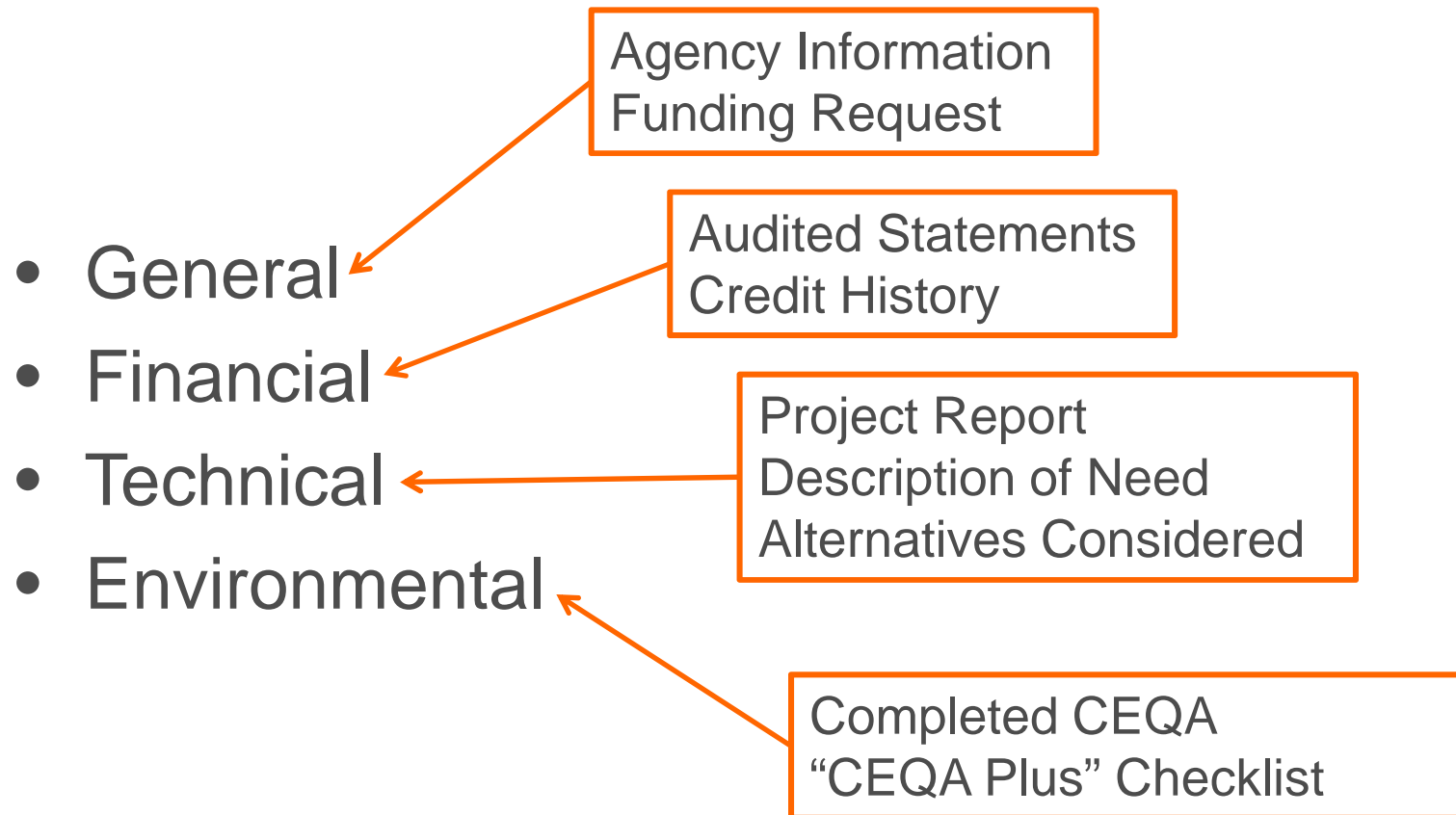


District facilities

Clean Water State Revolving Fund Program (CWSRF) provides low-interest loans to municipal agencies



SRF Application Components



Environmental review is usually the critical path to application approval

- General
- Financial
- Technical
- Environmental

1 – 2 months to review



3 – 6 months to review
1 – 18 months to prepare

Environmental Application includes:

- CEQA Document
 - Notice of Exemption
 - Mitigated Negative Declaration (MND)
 - Environmental Impact Report (EIR)
- Evaluation Form for Environmental Review and Federal Coordination (CEQA+ Checklist)

Satisfies State requirement that project meets CEQA

Identifies federal agencies that may require consultation

Environmental Application Forms

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Finance Assistance
P. O. Box 944212, Sacramento, CA 95824-2122

FINANCIAL ASSISTANCE APPLICATION
Clean Water State Revolving Fund
Water Recycling Funding Program

Print

Save

ENVIRONMENTAL PACKAGE

Applicant (Entity) Name:	
Project Title:	
Contact Person:	Phone: ()

I. CEQA STATUS

Please check the one box that describes the project in this application:

- ☐ The CEQA process has not yet started for this project
- ☐ The CEQA process is underway for this project*
- ☐ The CEQA process is complete for this project (complete Question 2 below)
- ☐ The CEQA process was completed for this project more than 5 years prior to anticipated State Water Board agreement execution date** (complete Question 2 below)

* A draft of the CEQA document shall be provided to the Division for review and comment. Also provide to the Division copies of any consultation with federal cross-agency information (i.e., USFWS species/biological assessment, cultural resources report, air quality analysis data, flood map, etc.). This will enable the Division to better understand the environmental impacts, and provide more meaningful comments on the draft CEQA document before it is sent to the State Clearinghouse.

** If the CEQA document was prepared more than five years prior to the anticipated assistance agreement execution date, please provide an updated CEQA document (supplement or addendum) that evaluates the current environmental status of the project.

II. CEQA DOCUMENTS*** (Complete this section only if the CEQA process has been completed for this project)

Please check all box(es) that describe this application and submit the required attachments for the applicable section(s).

- ☐ Project is covered under a CEQA Categorical or Statutory Exemption (complete Section A below and attach documents)
- ☐ Project is covered under a Negative Declaration (complete Section B below and attach documents)
- ☐ Project is covered under a Mitigated Negative Declaration (complete Section C below and attach documents)
- ☐ Project is covered under an Environmental Impact Report (complete Section D below and attach documents)

*** If a Joint CEQA/NEPA document (EIS/Environmental Assessment or EIS/Environmental Impact Statement) is prepared for the project, submit the applicable Record of Decision and/or Finding of No Significant Impact.

Required Attachments	Section A	Section B	Section C	Section D
E1- EVALUATION FORM FOR ENVIRONMENTAL REVIEW AND FEDERAL COORDINATION AND SUPPORTING ATTACHMENTS E1.1 TO E1.13				
E2- DRAFT AND FINAL INITIAL STUDY/NEGATIVE DECLARATION (ISND)				
E3- DRAFT AND FINAL INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (ISMD)				
E4- DRAFT AND FINAL ENVIRONMENTAL IMPACT REPORT (EIR)				
E5- COMMENTS AND RESPONSES				
E6- STATEMENT OF OVERSIGHTING CONSIDERATION (if Applicable)				
E7- MITIGATION MONITORING AND REPORTING PLAN/PROGRAM (MMRP)				
E8- RESOLUTION APPROVING THE CEQA DOCUMENTS				
E9- NOTICE OF EXEMPTION				
E10- NOTICE OF DETERMINATION				

FOR STATE USE ONLY

CWSRF Project #
Project Manager
Date Received

E1 – ENVIRONMENTAL REVIEW AND FEDERAL COORDINATION ATTACHMENTS

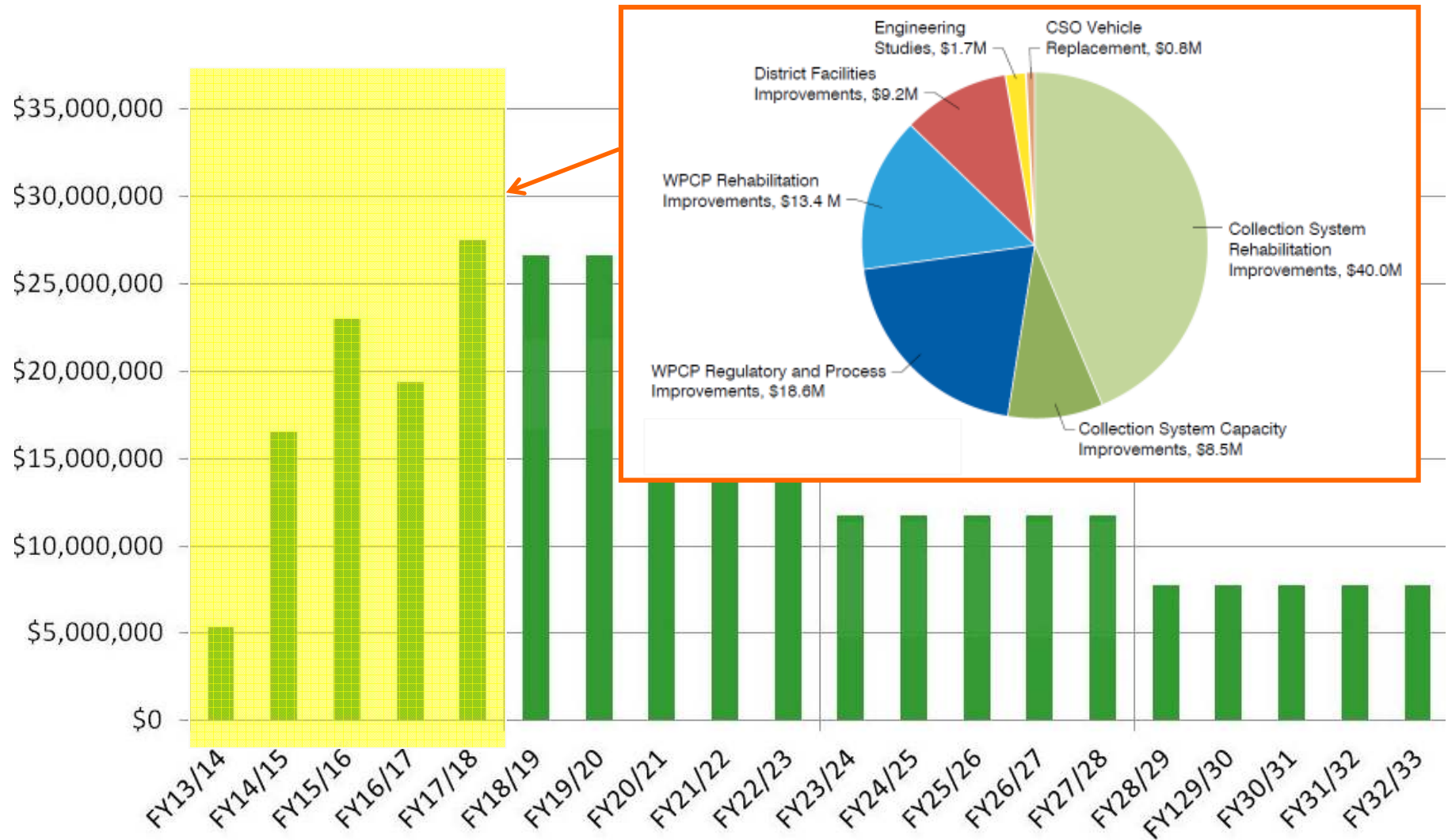
Check the box next to each item to indicate which supporting attachments you have provided with your application. The supporting documents must be provided unless it is not applicable.

- ☐ E1.1 – **Clean Air Act**
- Air quality modeling data
 - Complete air emissions chart (see Evaluation Form below)
 - General conformity and/or air quality studies, *if applicable*
- ☐ E1.2 – **Coastal Barriers Resources Act**
- Consultation record for CBRA resources in the vicinity of the project area with the USFWS, *if applicable*
- ☐ E1.3 – **Coastal Zone Management Act**
- Copy of coastal zone permit or coastal exemption, *if applicable*
- ☐ E1.4 – **Endangered Species Act**
- Up-to-date (less than one year old) USFWS, CDFW Natural Diversity Database, and CNPS species lists
 - Project-level biological resources and habitat evaluation including field survey and species lists review
 - Record of federal consultation and correspondence, *if applicable*
- ☐ E1.5 – **Environmental Justice**
- Consultation record for the affected areas with the USEPA Office of Enforcement and Compliance Assurance, *if applicable*
- ☐ E1.6 – **Farmland Protection Policy Act**
- Assessment of the conversion of prime/unique farmland and farmland of statewide/local importance to non-agricultural uses, *if applicable*
 - Assessment of Williamson Act lands converted and/or affected, *if applicable*
 - Consultation with USDA and correspondence, *if applicable*
- ☐ E1.7 – **Flood Plain Management**
- FEMA flood mapping of the project area, *if applicable*
 - Assessment of flood hazard and drainage pattern alteration, *if applicable*
- ☐ E1.8 – **National Historical Preservation Act**
- Cultural Resources Report (with less than one year old record search, extending to a half-mile beyond the project APE) on historic properties consistent with the National Historic Preservation Act requirements
- ☐ E1.9 – **Magnuson-Stevens Fishery Conservation and Management Act**
- Essential Fish Habitat Assessment (EFH Assessment) for the State Water Board's consultation with the NOAA National Marine Fisheries Service, *if applicable*
 - Please see regulation E1.4 above for EFH Assessment requirements
- ☐ E1.10 – **Migratory Bird Treaty Act**
- List of migratory birds including avoidance measures, *if applicable*
- ☐ E1.11 – **Protection of Wetlands**
- Copy of 401 Certification from the Regional Water Quality Control Board, *if applicable*
 - Copy of 404 permit from the USACE, *if applicable*
 - Wetland delineation and survey assessment, *if applicable*
- ☐ E1.12 – **Safe Drinking Water Act, Sole Source Aquifer Protection**
- Consultation record with the USEPA Region 9 Ground Water Office, *if applicable*
- ☐ E1.13 – **Wild and Scenic Rivers Act**
- Consultation record with the USDA Forest Service Region 5 Office, *if applicable*

CEQA+ Checklist

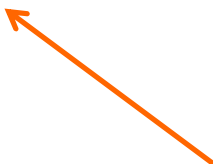
- Federal Endangered Species Act ([USFWS](#))
- Essential Fish Habitat ([NMFS](#))
- National Historic Preservation Act ([NAHC](#))
- Clean Air Act ([ARB](#))
- Coastal Zone Management Act ([CCC](#), [BCDC](#))
- Floodplains ([FEMA](#))
- Wetlands ([U.S. Army Corps](#))
- Migratory Bird Treaty Act ([USFWS](#))
- Environmental Justice ([USEPA](#))

How do you obtain SRF Funding for 99 projects totaling \$92 million?



WCWD developed a strategy with the State to obtain SRF funding for the CIP program

- Bundle projects in SRF applications
- Streamline the environmental review
 - Minimize environmental review required for 1st SRF application to fast-track initial funding
 - Complete Programmatic Environmental Impact Report for 20-year Plan

- 
- Addresses big picture issues and cumulative and system-wide effects
 - Reduces state concerns and legal risk of protests due to “piecemealing”
 - Disclose impacts to agencies, public

5-Year Schedule

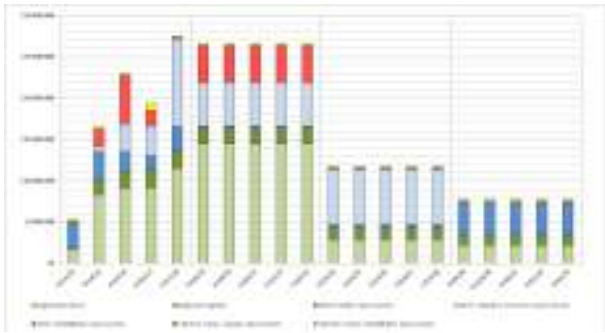
Project Tasks	FY13/14				FY14/15				FY15/16				FY16/17				FY17/18							
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4				
CIP Bundling, Environmental Screening and 1 st SRF Application																								
1 st SRF Application Review																								
Design/Construction of Projects in 1 st SRF Application																								
Master Plan PEIR, Project Analysis																								
Prepare 2 nd SRF Application																								
2 nd SRF Application Review																								
Design/Construction of Projects in 2 nd SRF Application																								
3 rd SRF Application																								

1st SRF Application Project Screening

Types of construction projects to be implemented within the first five years

- Sewer rehabilitation (12" or less)
- Sewer rehabilitation (greater than 12")
- Lift Station Rehabilitation
- WPCP Rehabilitation
- WPCP Odor Control Improvements
- District Facilities Improvements

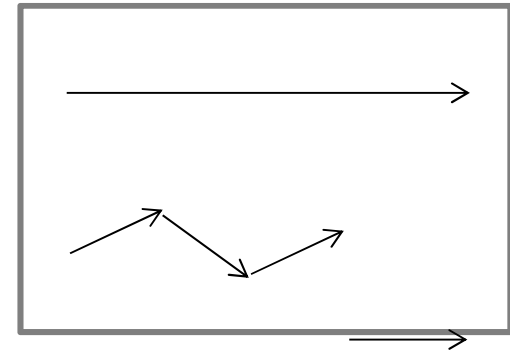
Projects were bundled to simplify the CWSRF application



Urgency



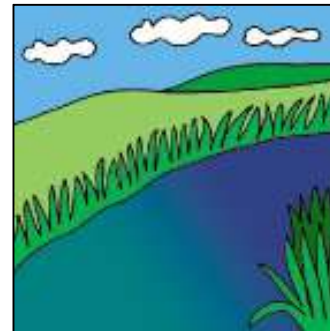
Cost



Complexity

Most critical because
environmental review
is critical path to
application approval

Relation to Other
Projects



Environmental
Impact

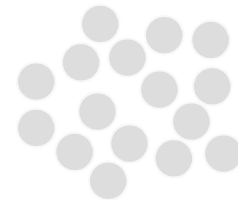
Why not bundle all the projects in one application?

More time to prepare application

More time to review application

Environmental section may be more complex for some projects than others

SRF
Application



Drivers for Environmental Screening

1. Exempt Under CEQA
2. No Triggers on CEQA Plus Checklist

What Projects Are Exempt?

- Statutory Exemptions

- Specific “Named” Activities exempted from CEQA



- Categorical Exemptions

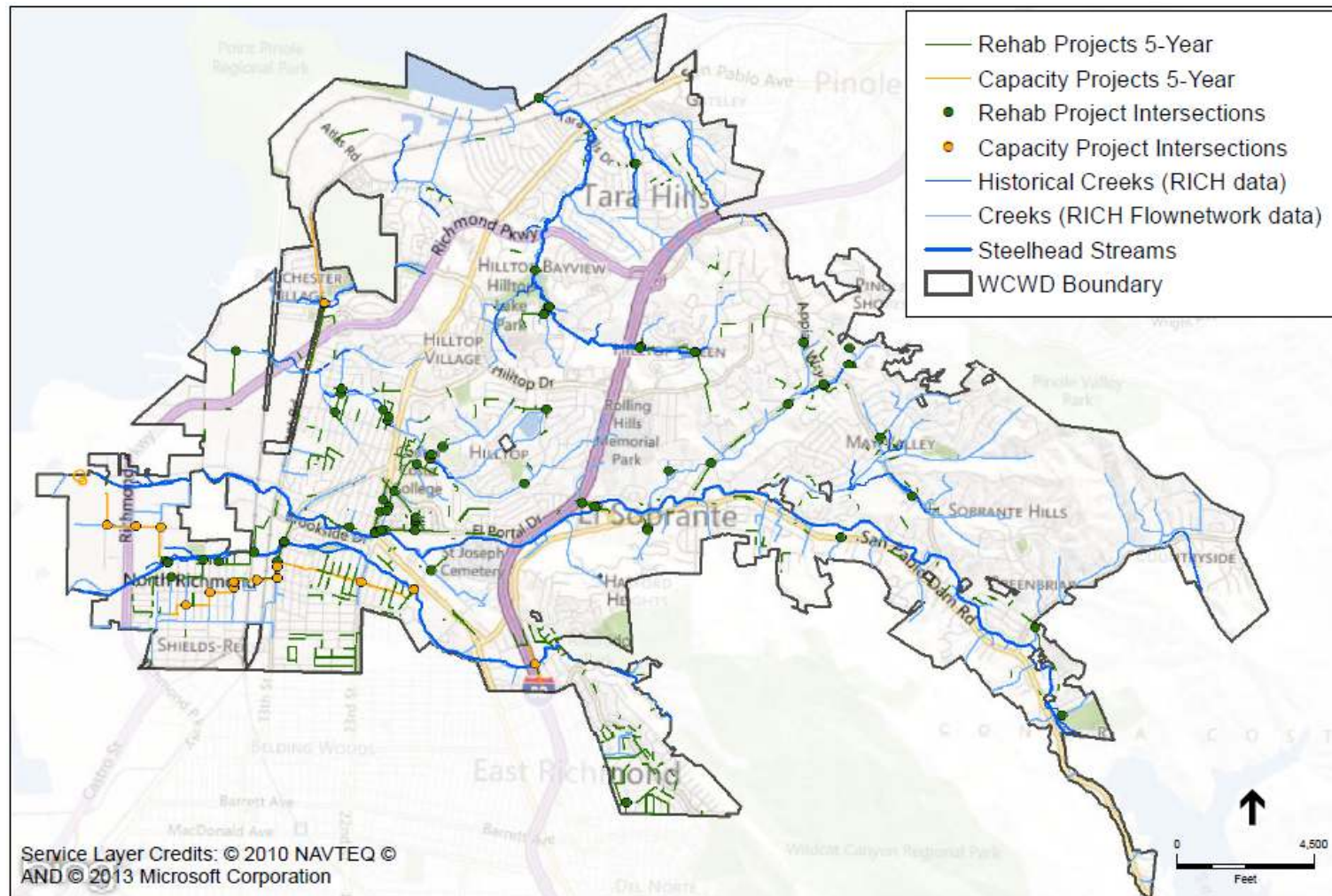
- Classes of projects exempted because they typically do not have significant impacts.



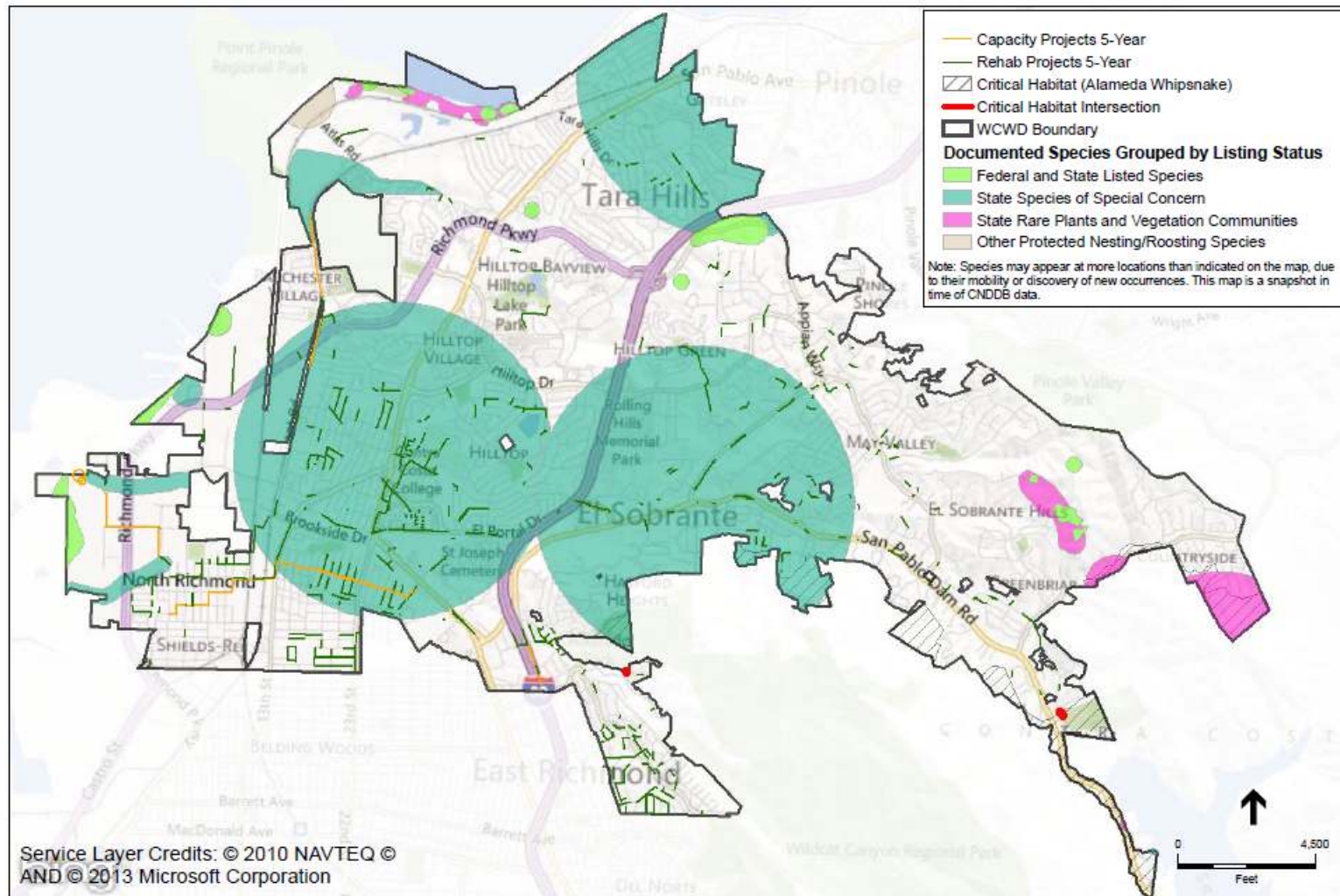
O&M, repair or replacement of an existing facility

Pipeline less than one mile in length in public right-of-way

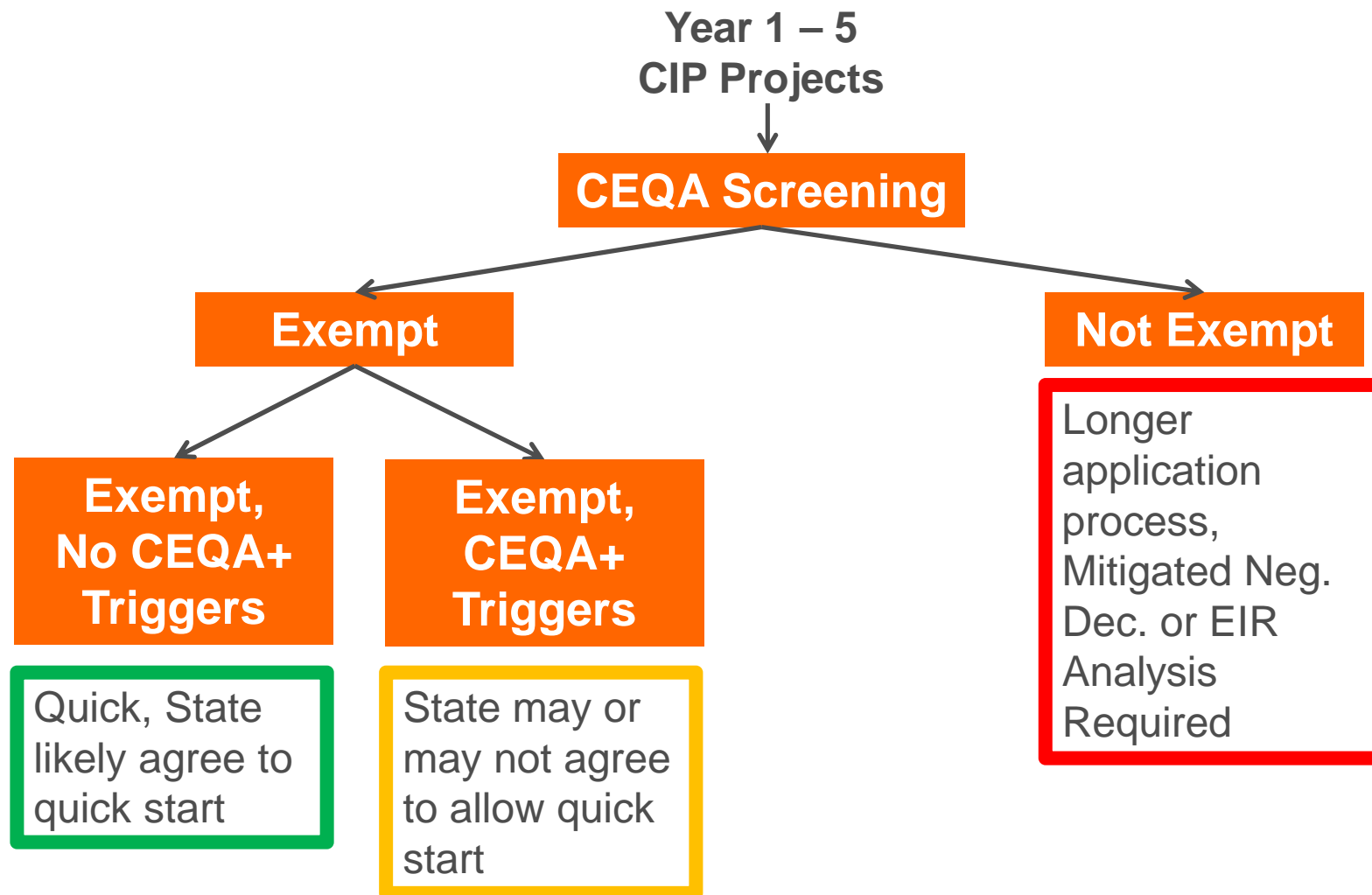
Biological Constraints – Waters of the US/State and Steelhead Streams



Biological Constraints – Known Species Occurrences Relative to Project Locations



Screened projects to determine level of environmental review required



CEQA Screening Summary for 5-year CIP

Project Type	Exempt, No CEQA+ Triggers	Exempt, CEQA+ Triggers	EIR/MND	Total
# Collection System Projects	21	52	0	73
# WPCP Projects	21	0	5	26
Total # Projects	42	52	5	99
\$\$, in millions	\$18	\$47	\$27	\$92

1st SRF Application Request

1st SRF Application

- Screened projects totaling \$18 million
- Application submitted Fall 2013
- Environmental review complete Feb 2014
- SWRCB approval April 2014
- Project design and construction underway

Meanwhile...
Master Plan EIR underway

20-Year Master Plan includes:

- Collection System
 - 80 miles of pipeline, lift stations
- Treatment Plant
 - Odor Control
 - Recycled Water Reliability Upgrades
 - Cogeneration and Digestion Improvements
 - Wet Weather Storage
 - Sludge Dewatering
- District Facilities
 - New Maintenance Facility
 - New Administration Building

Program EIR

- Addresses big picture issues and cumulative and system-wide effects
- Reduces state concerns and legal risk of protests due to “piecemealing”
- Discloses impacts to agencies, public
- Streamlines CEQA analysis for future projects

Project EIR

- Several near-term projects analyzed in detail within the EIR to facilitate implementation without additional CEQA review
 - Odor Control
 - Recycled Water Reliability Upgrades
 - New Maintenance Facility

2nd SRF Application

Recycled Water Reliability Upgrades

- CEQA: EIR project-level analysis
- CEQA Plus Checklist: additional review needed for air quality, hydrology, biology
- Application submitted fall 2014
- Environmental review complete Feb 2015
- Approval anticipated shortly

3rd SRF Application

Additional CEQA and SRF Checklist Review may be needed

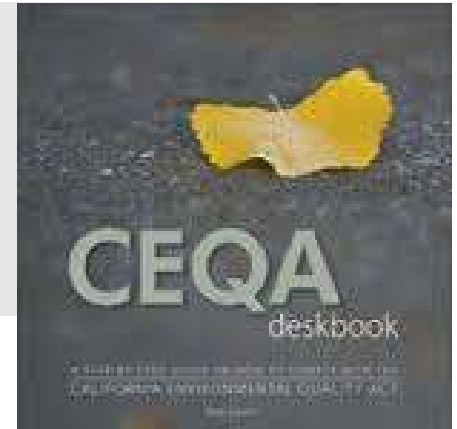
- CEQA: EIR project-level analysis and/or EIR Addendum
 - Field surveys, additional analyses
- SRF Checklist
 - Cultural resources sensitive areas
 - SHPO consultation
 - Possible wetland concerns

Conclusion

Various CEQA tools to streamline environmental review for SRF applications and fast-track funding

- Collaborate with the State to develop an SRF Strategy
- Strategically bundle multiple CIP projects into SRF applications
- Streamline environmental review
 - Minimize environmental review required for 1st SRF application
 - Complete Programmatic Environmental Impact Report for 20-year Plan
 - Complete environmental impact analysis needed for additional projects

In Practice: Dumbarton Transit-Oriented Development



California AEP Conference

Tuesday March 24, 2015: Session Block 6, 11:00

In Practice: Program -vs- Project

Presentation Summary:

- Why a Program EIR?
- Examples:
 - Program EIR to Project Approval via Addendum
 - Program EIR with later Negative Declaration
 - Program EIR with later Supplemental EIR
 - The Quagmire: When Courts are Confused

Why a Program EIR?

- For a plan not specific project – for example, a General Plan Update.
- When projects are phased with some uncertainty about later phases.
- CEQA requires we disclose what we know but does not require clairvoyance.
- Can avoid “piecemealing” claims.
- A ledge up a CEQA cliff - when you tier, you are part way up.

Dumbarton Transit Oriented Development



Dumbarton Transit Oriented Development

- A New Neighborhood – 2,500 Units & Retail Center
- Parks/ Bayside Trail
- Pedestrian And Transit Oriented
- Brownfield Site = Uncertainty
- Some Wetlands = More Uncertainty
- Macro and Off Site Impacts Knowable

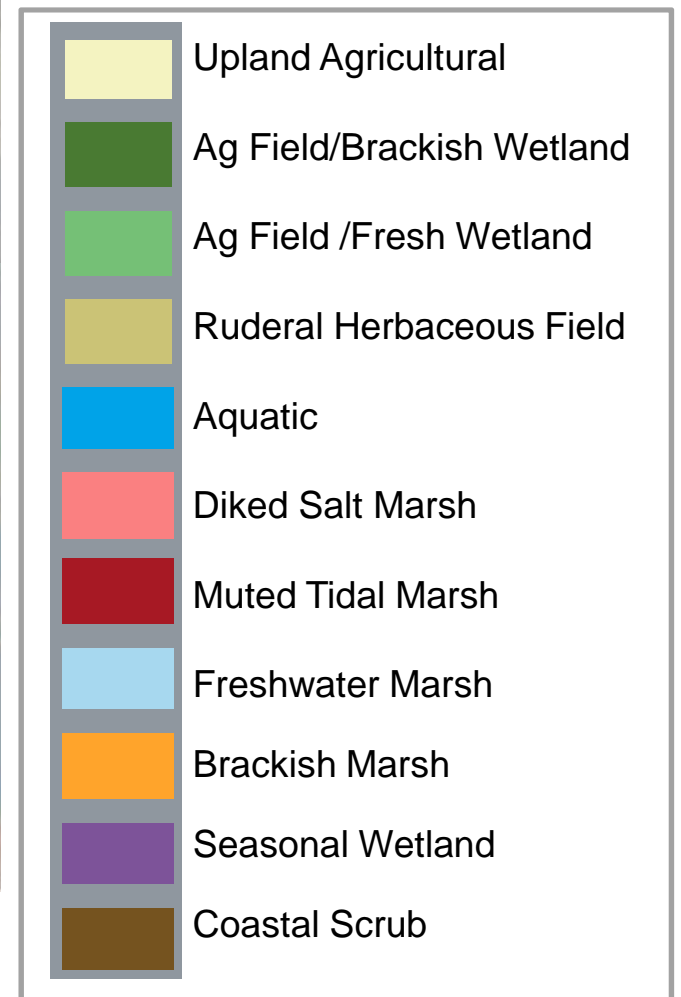
Dumbarton Transit-Oriented Phasing

- 1st Phase: 500 Homes – Approved on addendum because EIR included enough detail.
- 2nd Phase: Retail & 150 Units – approved on M.N.D.
- 3rd Phase: 300 Units. Supplemental EIR addressing site specific impacts.
- 4th Phase: 3-acre Park addendum anticipated.
- 5th Phase and onward...depends on circumstances.

Areas 3 and 4: Project Summary

- Area 3:
 - Detached Housing: Approximately 600 Units
 - School Site/ Joint Use Park
 - No Wetlands
- Area 4
 - Approximately 660 Units Detached Housing
 - Open Space Amenities and Bay-side Trail
 - Potential Golf Course
 - 0 to 85 acres of Wetland Fill





Legal Maneuvers

- Advocacy group filled suit in 2010 alleging numerous CEQA violations and other legal claims.
- Litigation proceeded at a glacial speed.
- Judgment finalized in December of 2014.
- The court rejected almost all of the claims.
- Only issue of substance was “Program -vs- Project”.
- Concluded “material deficiency” because the EIR did not clearly enough say which elements of the development would be subject to future CEQA review.

Quagmire

- Certain language confounded the judge: “0-85 acres of fill” & “potential golf course”
- The document was being faulted for honest disclosure of “ what we know now”
- CEQA Guidelines establish the standards for further review – to be applied when specific project is proposed
- Points out the danger of “program” documents: implications of “guessing” at future impacts can resonate with non experts.

Escaping the Quagmire

- Appeal would take years.
- Developer settled with advocacy group rather than appeal the “defective” ruling.
- Revised and recirculated the EIR, stressing which project elements would likely require further review.
- All the other data also updated.
- Project scheduled for readoption.
- We are hopeful that “Res Judicata” and promises in settlement agreement will give us a path out of the quagmire.