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

<table>
<thead>
<tr>
<th>Tier</th>
<th>Study Area</th>
<th>Document</th>
<th>Focus of Document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td></td>
<td>General Plan or Program EIR</td>
<td>Jurisdiction-wide setting, Jurisdiction-wide impacts (cumulative), Jurisdiction-wide mitigation measures (policies and programs)</td>
</tr>
<tr>
<td>Tier 2</td>
<td></td>
<td>Specific Plan EIR</td>
<td>Plan area setting, Plan area impacts, Plan area mitigation guidelines</td>
</tr>
<tr>
<td>Tier 3</td>
<td></td>
<td>Development Project EIR</td>
<td>Project site setting, Project site impacts, Project site mitigation guidelines</td>
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</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Environmental Factors for Determining Environmental Effect</th>
<th>Proposed Project Compared to the GPA EIR Project</th>
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<tbody>
<tr>
<td></td>
<td>Potentially New Impact - Further Investigation to be Undertaken</td>
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<tr>
<td>1. <strong>AESTHETICS</strong> — Would the project:</td>
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<tr>
<td>a) Have a substantial adverse effect on a scenic vista?</td>
<td>[ ]</td>
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<tr>
<td>b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</td>
<td>[ ]</td>
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<tr>
<td>c) Substantially degrade the existing visual character or quality of the site and its surroundings?</td>
<td>[ ]</td>
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<tr>
<td>d) Create a new source of substantial light or glare which would adversely affect daytime or nighttime views in the area?</td>
<td>[ ]</td>
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</table>
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.”

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**

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”?
• 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.
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?

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

YES
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?

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?

Concerned Dublin Citizens v. City of Dublin
(2013) 214 Cal. App. 4th 1301
• 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*  
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
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
“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
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Thanks to the project team…

<table>
<thead>
<tr>
<th>Organization</th>
<th>Names</th>
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<tbody>
<tr>
<td>West County Wastewater District</td>
<td>E.J. Shalaby - General Manager</td>
</tr>
<tr>
<td></td>
<td>Ken Cook - Engineering Services Manager</td>
</tr>
<tr>
<td>State Water Resources Control Board</td>
<td>Christopher Stevens</td>
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<tr>
<td></td>
<td>SWRCB SRF Staff</td>
</tr>
<tr>
<td>Carollo Engineers</td>
<td>Andre Gharagozian</td>
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<td></td>
<td>Steve Swanback</td>
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<td>Katy Rogers</td>
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<td>ESA</td>
<td>Julie Moore</td>
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<td>Jim O’Toole</td>
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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.
Clean Water State Revolving Fund Program (CWSRF) provides low-interest loans to municipal agencies.
SRF Application Components

- General
- Financial
- Technical
- Environmental

- Agency Information Funding Request
- Audited Statements Credit History
- Project Report Description of Need Alternatives Considered
- Completed CEQA “CEQA Plus” Checklist
Environmental review is usually the critical path to application approval.

- General: 1 – 2 months to review
- Financial: 3 – 6 months to review
- Technical: 1 – 18 months to prepare
- Environmental: 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

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, as 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 maps 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 APEI) 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
  - 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

<table>
<thead>
<tr>
<th>Project Tasks</th>
<th>FY13/14</th>
<th>FY14/15</th>
<th>FY15/16</th>
<th>FY16/17</th>
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<td>CIP Bundling, Environmental Screening and 1st SRF Application</td>
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<tr>
<td>1st SRF Application Review</td>
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<td>Design/Construction of Projects in 1st SRF Application</td>
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<td>Master Plan PEIR, Project Analysis</td>
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<td>Prepare 2nd SRF Application</td>
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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

Most critical because environmental review is critical path to application approval
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
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

Year 1 – 5 CIP Projects

**CEQA Screening**

- **Exempt**
  - **Exempt, No CEQA+ Triggers**
    - Quick, State likely agree to quick start
  - **Exempt, CEQA+ Triggers**
- **Not Exempt**
  - Longer application process, Mitigated Neg. Dec. or EIR Analysis Required
  - State may or may not agree to allow quick start
# CEQA Screening Summary for 5-year CIP

<table>
<thead>
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<th>Project Type</th>
<th>Exempt, No CEQA+ Triggers</th>
<th>Exempt, CEQA+ Triggers</th>
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<tr>
<td># Collection System Projects</td>
<td>21</td>
<td>52</td>
<td>0</td>
<td>73</td>
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<tr>
<td># WPCP Projects</td>
<td>21</td>
<td>0</td>
<td>5</td>
<td>26</td>
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<tr>
<td>Total # Projects</td>
<td>42</td>
<td>52</td>
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<td>$$, in millions</td>
<td>$18</td>
<td>$47</td>
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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
2\textsuperscript{nd} 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.
• 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.