



# CEQA: Advanced In the Weeds

March 30, 2023 | 10:30 AM

SHANNON GEORGE & MARK TEAGUE

# Overview of Today's Presentation

- ▶ How CEQA Decisions are Made
- ▶ Type of Analysis
- ▶ What is Streamlining
- ▶ Addendums & Exemptions
- ▶ Project Description
- ▶ Technical Studies
- ▶ Mitigation Measures
- ▶ Project Design Standards
- ▶ Objective Design Standards
- ▶ Impacts that Can't be Mitigated
- ▶ Findings
- ▶ Statements of Overriding Consideration
- ▶ Testimony at Hearing(s)





# How CEQA Decisions are Made

- ▶ Type of project
- ▶ Results of technical studies
- ▶ Knowledge of the community
- ▶ Previous decisions by decision makers
- ▶ Results of litigation
- ▶ Public controversy



# What Type of CEQA Analysis?

## Substantial Evidence

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

## Fair Argument

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



**I'm afraid my brain has left for the day.**



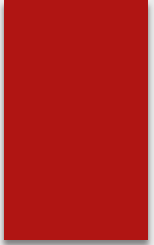
# What is Streamlining?

- ▶ Shortening the timeline between application and consideration.
- ▶ Eliminating parts of the process that simply don't apply.
- ▶ Completing analysis beforehand so that the impact and the mitigation is standardized.
- ▶ Making a decision in a timely fashion.





# Streamlining § 15183

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

# Streamlining Through Ministerial Acts

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

WEED & GRASS

Roundup  
READY-TO-USE





# Addendums and Exemptions



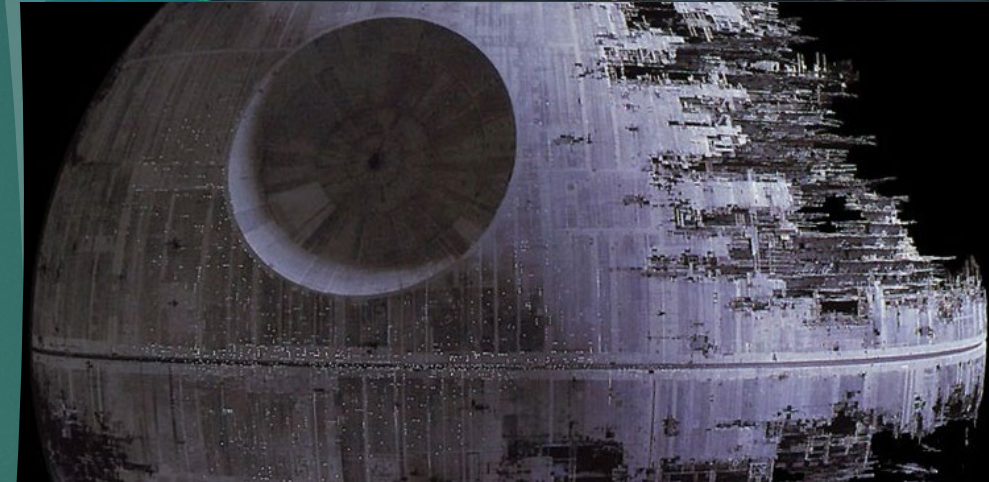
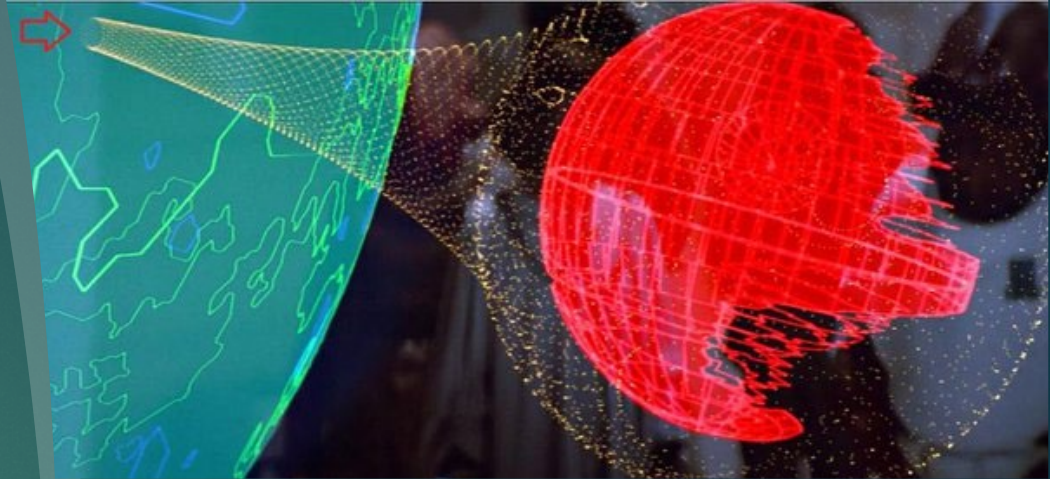
- ▶ How is an Addendum structured?
- ▶ What is § 15183
- ▶ Streamlining
- ▶ Fear is the mind bender
- ▶ Extra work does not = more defensible document
- ▶ Narrow the scope!



# Project Description

## Whole of the project

- ▶ On-site changes
- ▶ Off-site changes
- ▶ Operational Characteristics
- ▶ Mitigation Measures







# Technical Studies



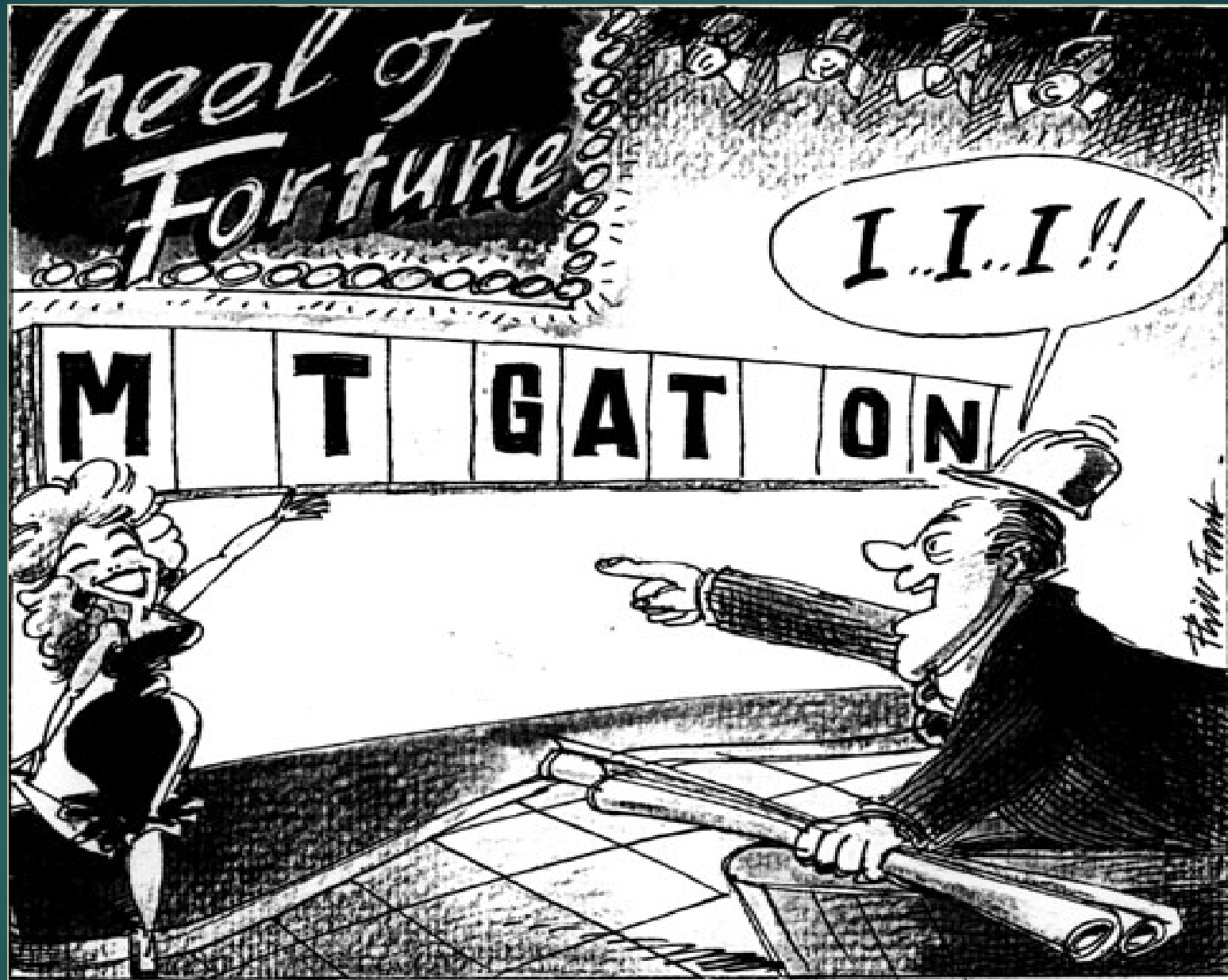
- ▶ Scope of the analysis
  - ▶ Geographic area
  - ▶ Not limited to agency boundaries
  - ▶ Focused on environmental topic
- ▶ Times & days matter
  - ▶ Is school in session
  - ▶ Is it spring or winter
  - ▶ Wet or dry year
- ▶ Models
  - ▶ Generally blunt instruments
  - ▶ Four decimal places is absurd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





# Technical Studies

- ▶ Usually very narrow scope
- ▶ Check the baseline information
- ▶ Before you ask for more study, what is it you hope to find out?
- ▶ Expensive and time consuming
- ▶ Results dependent upon the assumptions
- ▶ Will not recommend approval or denial of a project





# Mitigation Measures

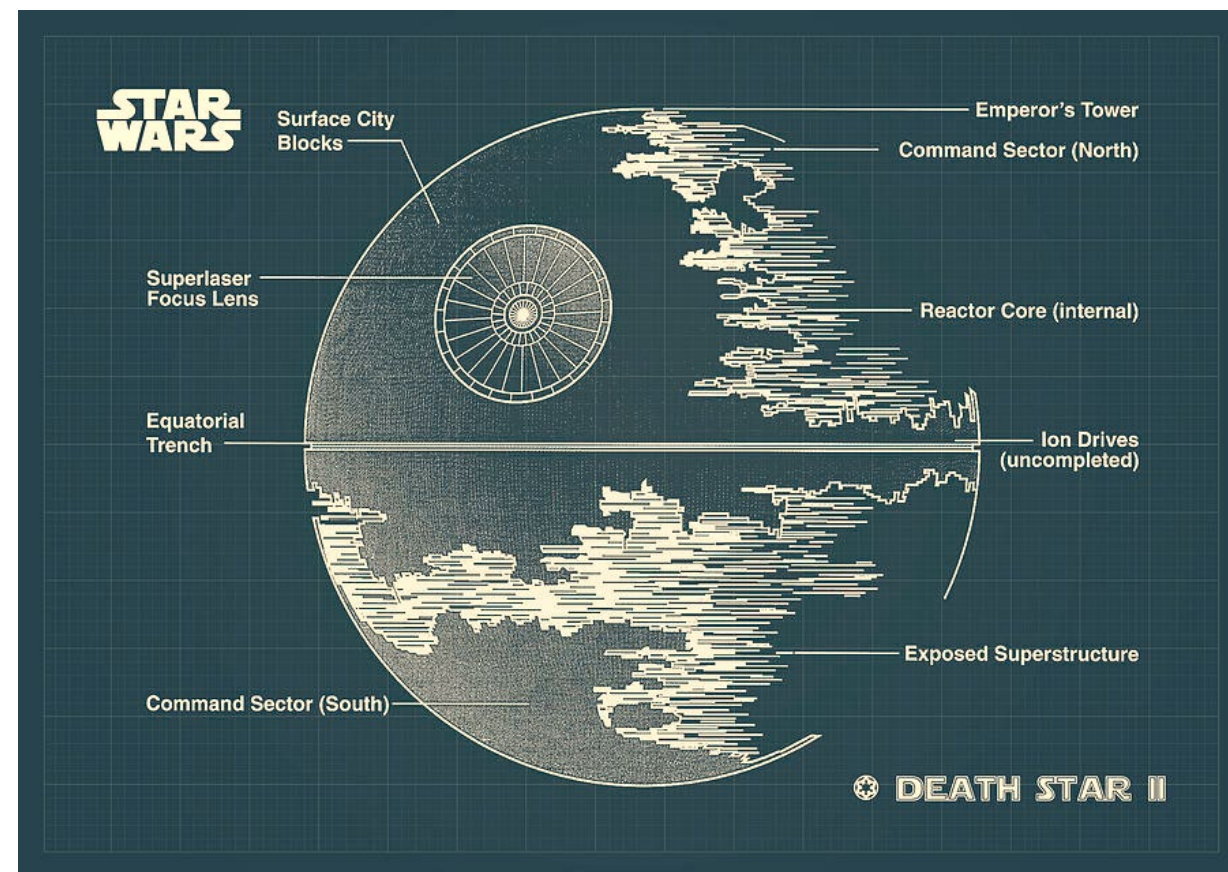
- ▶ Project Design Features
- ▶ Formal Mitigation Measures
  - ▶ Measurable changes to a project
  - ▶ What does feasible mitigation mean?
  - ▶ What level do we mitigate to?
  - ▶ Within your jurisdiction and authority





# Project Design Features

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







# Objective Design Standards...

- ▶ Standard Permit Conditions – a form of streamlining.
- ▶ Consistent for every project
- ▶ Only unusual circumstance for deviation. Must be clearly defined.



# Mitigation Measures

- ▶ Requirement to mitigate does not confer to agencies any new legal authority:
  - ▶ “...a public agency may exercise only those express or implied powers provided by law other than this division.” (PRC 21004)
- ▶ Measures must be enforceable.
  - ▶ Pay particular attention to “fair-share fees”
  - ▶ Difficult to enforce future public behavior
- ▶ Be linked to a significant impact – No nexus, no mitigation





# What are “Mitigation Measures” Supposed to Do?

## Changes required of the project to:

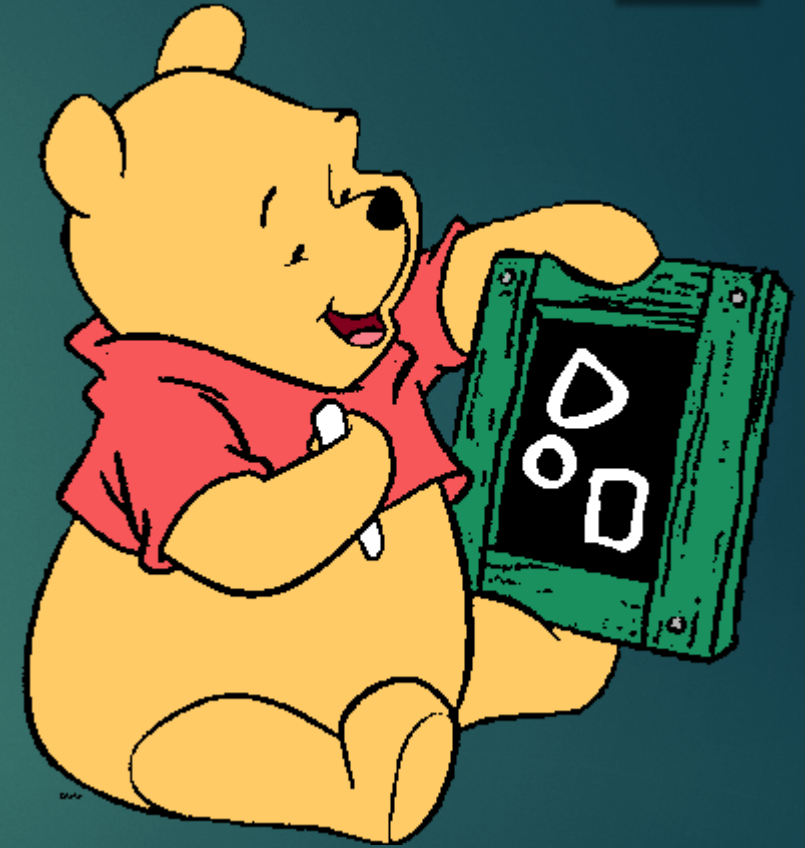
- ▶ Avoid the impact altogether
- ▶ Minimize the degree of magnitude of impact
- ▶ Rectify the impact through restoration
- ▶ Reduce or eliminate the impact through preservation
- ▶ Compensate for the impact





# Formulation of Mitigation Measures

- ▶ Clearly state the required action or level of performance that is necessary to mitigate.
- ▶ Explain how the measure would mitigate, especially if it is not facially obvious.
- ▶ Clearly state the level of impact after mitigation.
- ▶ Substantial evidence must support determination that measure will mitigate.



You understand it when you can explain it



# Adequacy of Mitigation

## Adequate



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

## Questionable



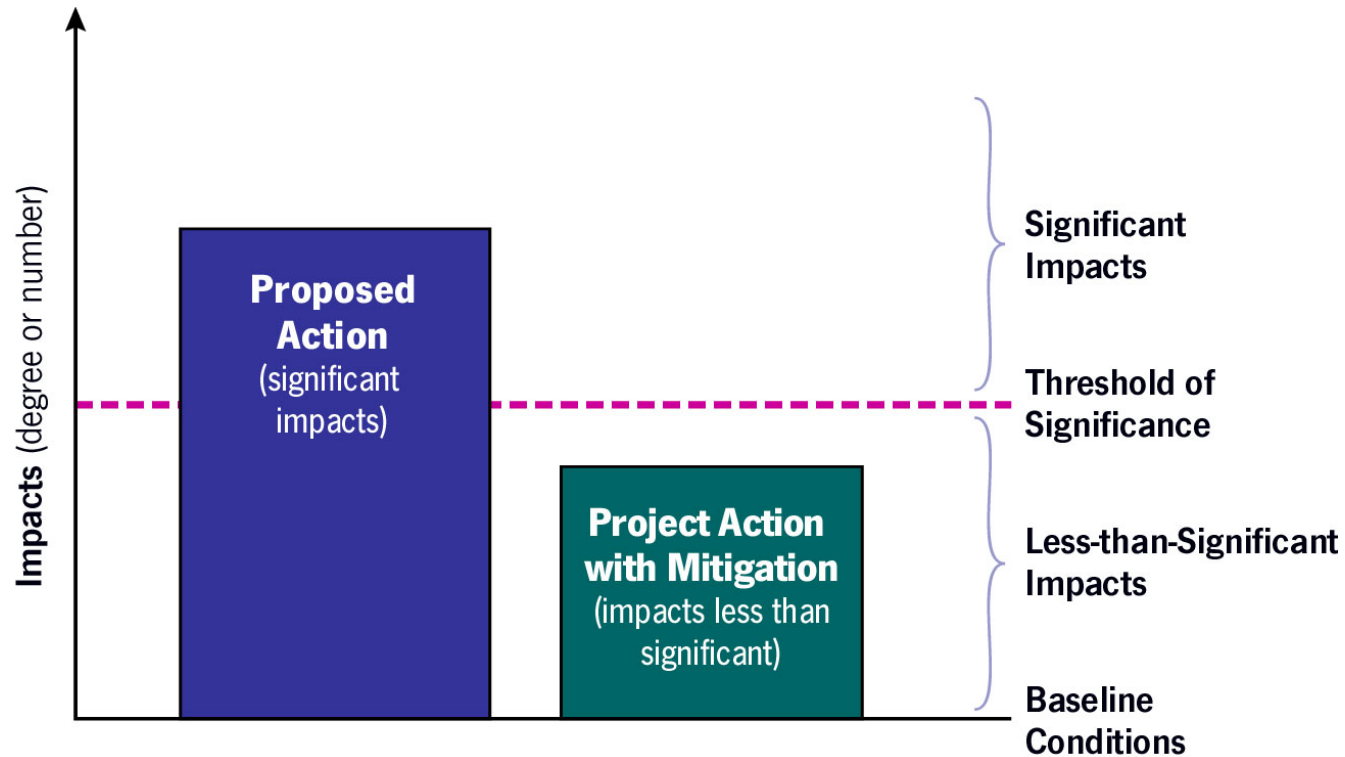
- Provide funding for
- Hire staff
- Monitor or report
- Comply with existing regulations or ordinances
- Preserve already existing natural area

## Inadequate



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

# To What Level do we Mitigate?



- ▶ To a level at or below the threshold
- ▶ Zero impact is not the goal
- ▶ ~~Can not~~ Should not have to mitigate for impacts of others
- ▶ Important to demonstrate impact after mitigation



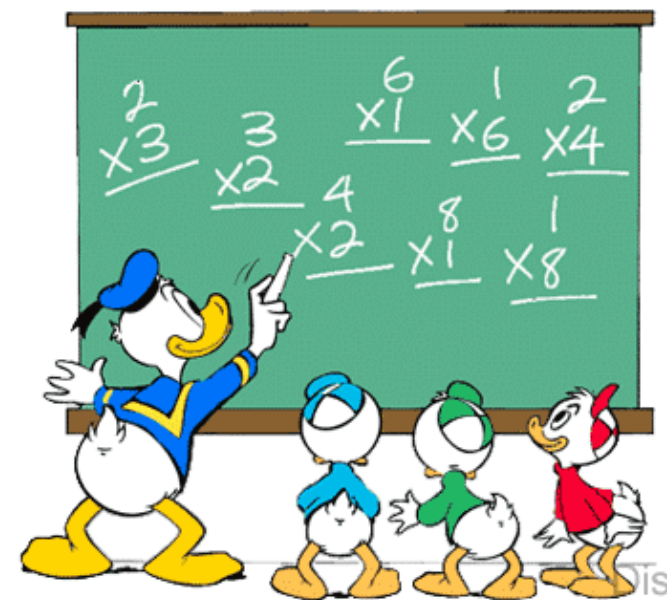
# Impacts that Can't be Mitigated to Less Than Significant

- ▶ Sometimes even with mitigation an impact remains significant
- ▶ The analysis *must include all feasible mitigation*
- ▶ Substantial evidence is needed to discard a suggested mitigation
- ▶ Cost should not be the only reason to discard the mitigation
- ▶ If you have them you need an EIR
- ▶ With an EIR you can still approve the project
- ▶ Significant impacts *do not* (necessarily) stop a project



# Findings

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







# Statement of Overriding Considerations



- ▶ Reasons why the project should be approved even though it has significant environmental impacts
- ▶ Supported by substantial evidence
- ▶ We need the \$\$\$ isn't likely to survive challenge
- ▶ List as many reasons as make sense, only one is needed to support the override

# Testimony at Hearings

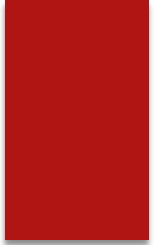
- ▶ Late Hits
- ▶ How to balance testimony
- ▶ When to Continue the item
- ▶ When to decide
- ▶ You are essential to a successful conclusion of the CEQA process!







# Don't Rely on CEQA to Plan

- ▶ We don't fix things in the EIR, we report on what's broken
  - ▶ The CEQA process has been used as a means to avoid detailed planning for years. With new laws like SB 330 and SB 35, the discretion and, therefore, CEQA is eliminated making local planning more important
  - ▶ Solving this means:
    - ▶ Adopting Objective Standards
    - ▶ Requiring Technical Reports by Ordinance
    - ▶ Reviewing and Understand your Capital Improvement Program
    - ▶ Keeping Impact Fees Current
- 



# Other CEQA Pieces – For EIR



## ▶ **Cumulative Analysis**

- ▶ Not necessarily 'build out'
- ▶ Two methods: project list or regional model
- ▶ May have different setting than project
- ▶ Not the worse case

## ▶ **Alternatives**

- ▶ Must avoid or lessen an environmental impact
- ▶ Project alternatives may not be CEQA alternatives
- ▶ Not discussed at same level as project
- ▶ Compared against project applicant's project objectives
- ▶ Only the no-project alternative is required



# Thank You

**Shannon George** | Vice President/Principal Project Manager

David J. Powers & Associates, 408.454.3402

[sgeorge@davidjpowers.com](mailto:sgeorge@davidjpowers.com) | [davidjpowers.com](http://davidjpowers.com)

**Mark Teague, AICP** | Managing Principal

PlaceWorks, 858.776.5574

[mteague@placeworks.com](mailto:mteague@placeworks.com) | [placeworks.com](http://placeworks.com)