



## CEQA : *New Strategies for Streamlining the Environmental Review Burden*

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## Areas of CEQA Streamlining

- Exemptions and Streamlined Documents
- Addenda
- Tiering
- Special Legislation
- Practical Tips



# Exemptions and Streamlined Documents

## Exemptions

- 1 General Categories
- 2 Urban Infill
- 3 Residential projects consistent with Specific Plan EIR
- 4 Transit Priority Projects



## Streamlined Documents

- Sustainable Communities Environmental Assessment



- Infill EIR



## Exemption

- Always first place to look
- Laundry list of types
  - statutory
  - categorical

Examples

**Limited new construction**  
**Small additions**  
**Minor alterations**

- ✓ Can use multiple exemptions for single project
- ✓ If creative, file NOE

## Exemption

- Urban Infill (CEQA Guidelines §15332)
- Consistent with GP and zoning
  - Within City, not County
- ≤ 5 acres surrounded by urban uses
- Served by utilities and public services
- NO habitat
  - No significant traffic, noise, AQ or WQ impacts



## Exemption



### PROS

- Broad applicability
- Limited factual findings

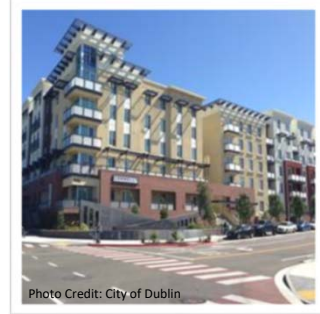


### CONS

- Site size limits
- Subject to “exceptions” exclusion

## Exemption

- Residential Projects consistent with Specific Plan EIR (Gov't Code § 65457)
- UNLESS subsequent environmental review required under CEQA
- Example – Dublin Transit case



## Exemption

- Transit Priority Projects (PRC § 21155.1)
- Must meet detailed list of land use and environmental criteria
  - Available utilities. NO habitat, historic and public health impacts. No more than 8 acres and 200 units.
  - 15% greater energy efficiency, 25% less landscape water
- Provide open space or affordable housing benefit



## Exemption

- Way to defeat exemptions – general exceptions
- Applies to categorical, not statutory, exemptions
- Unusual circumstances, cumulative impacts, zero hazardous waste, historic
- Example - Berkeley Hillside case



## Streamlined Documents

- Sustainable Communities Environmental Assessment
- Infill EIRS
  - Strict criteria to meet for use
  - Still significant document with public review required
  - More defensible than negative decision – substantial evidence not fair argument test
  - Worse than exemption but better than EIR

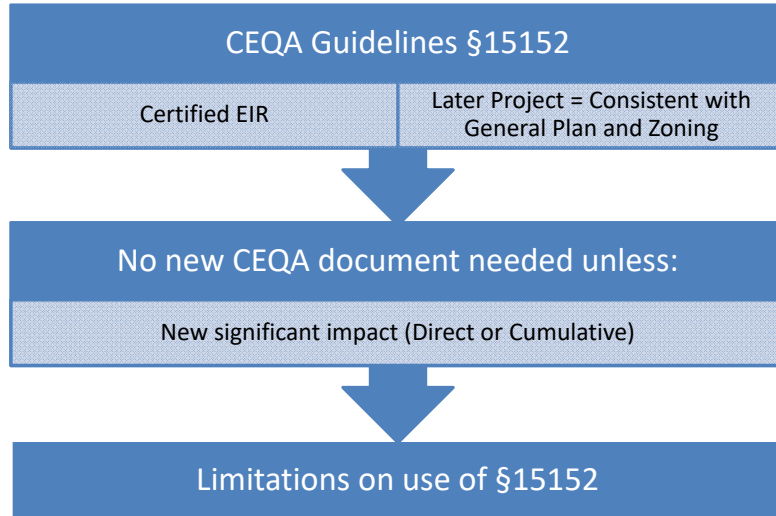
# Tiering & Addenda

## Tiering & Addenda - Overview

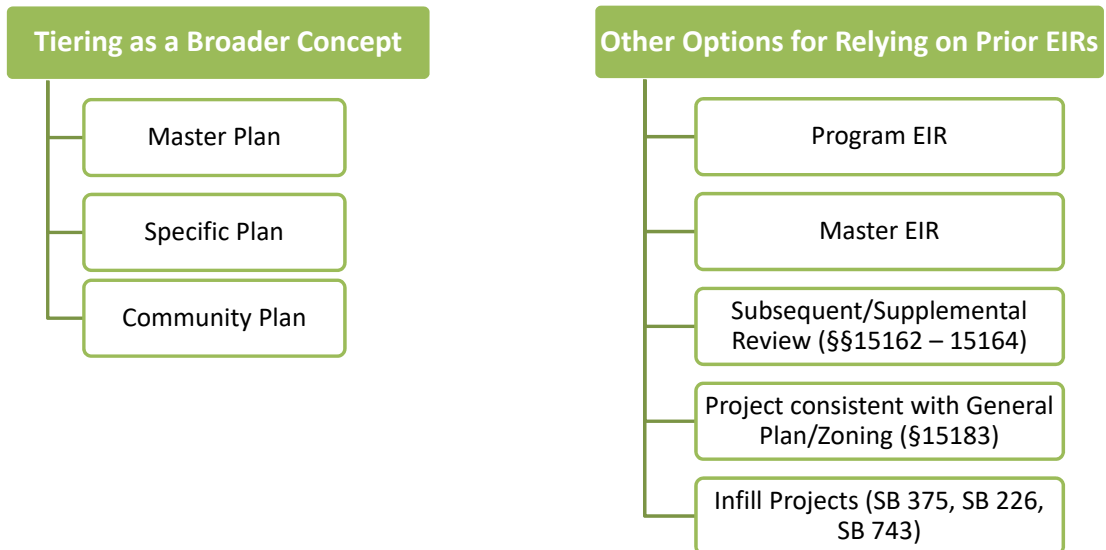
- How Not to Re-Invent the Wheel
- What is Tiering?
- Options for Later Use of Certified EIRs
- Addenda – Recent Direction from California Supreme Court



# Tiering 101



# Tiering 201





## When to Use An Addendum?

- CEQA Guideline §1516  
Authorizes Addendum to EIR or MND
- Addendum can be used per Guideline §15162:
  - No substantial changes  
in project/circumstances
  - No new information  
of substantial importance



## Why Use An Addendum?

- No public circulation required
- Brief explanation of why project does not trigger  
substantial changes/new information

## Can We Use An Addendum?

- Recent California Supreme Court case
- *College of San Mateo Garden v. San Mateo Community College District* (1 Cal.5th 937)
- Court approves use of Addendum based on prior Mitigated Negative Declaration for campus master plan including building rehab
  - New project proposed demolition of building



## How To Be Addend-Smart

- California Supreme Court holds: Lead Agency has discretion to determine whether later activity is part of the original project
- Courts reviewing decision on substantial changes/significant new information:
  - ↳ EIR: Does “substantial evidence” support decision?
  - ↳ MND: Is there “fair argument” of a new/more significant impact?

# Special Legislation

## Special Streamlining Legislation - Overview

- Environmental Leadership Development Projects (“ELDP”) – Pub. Res. Code § § 21182-21184
- Special statutes for specific projects (Sacramento Kings Arena, etc.)



## Three Categories of ELDP Projects

- Residential, retail, commercial, sports, cultural, entertainment or recreational projects
  - Infill site in urbanized area
  - LEED silver or better
  - Achieve a 10% greater standard for transportation efficiency
- Wind or solar projects
- Clean manufacturing projects
- **No industrial or infrastructure projects**



## ELDP Projects - Requirements

- \$100 million minimum investment
- Create high wage, highly skilled jobs
- No net additional emissions of greenhouse gases (CARB)
- Consistent with Sustainable Communities Strategy



## ELDP – Project Applicant Requirements

- Apply for ELDP status prior to Draft EIR release
- Must pay for administrative record and all costs at the Court of Appeal
- Binding agreement that mitigation measures will be conditions of project approval



## ELDP Determination Process

- Project applicant submits application to Governor
- Governor determines if all requirements satisfied
- Joint Legislative Budget Committee for review and concurrence
- No court review of Governor's determination, but public comment permitted



## ELDP Streamlined Rules for Review

- Administrative Record prepared concurrent with review process
- All materials placed in record must be posted on internet after release of Draft EIR
- Any documents prepared by lead agency must be posted on internet within five days of release
- All comments must be posted within five days of receipt (seven if received only in hard copy)

## ELDP - Post-Approval Process

- Must certify the final administrative record within five days of its approval of the project
- Lawsuit encouraged to be filed within 10 days of NOD
- Litigation to be resolved (including appeals) within 270 days of certification of AR



## Examples of ELDP Projects

- Golden State Warriors (SF)
- Apple Campus 2 (Cupertino)
- 8150 Sunset/Frank Gehry Project (LA)



## EDLP – Pros and Cons

- Advantages
  - Expedites review and litigation
  - Encourages development of sustainable projects
- Disadvantages
  - Limited application (less than 10 projects)
  - Expensive, only for “mega-projects”
  - Courts, cities and public unfamiliar with process

## Practical Tips

### Other Ways to Streamline

- Concurrent preparation of AR
- Online posting of comments/documents when received
- Benefits:
  - Significant time-saving benefits
  - Identify issues early in the process
  - Reduce time, costs and risk of litigation





# Lessons Learned

## Presenters



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