

# So, you want to build...

### Initial Planning

- Identify Property
- Site Assessments
- Preliminary/Conceptual Design
- Identify Permits and Approvals
- Submit Applications for Permits and Approvals

# The CEQA Gauntlet

### CEQA PROCESS (refer to Section I of report)

- Preliminary Review
- Initial Study Process
- Preparing the CEQA Document
- Public Review Period
- Project Approval
- CEQA Litigation

### National Environmental Policy Act (NEPA) Materials

- NEPA (42 U.S.C. § 4321 et seq.)
- Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR § 1500.1 et seq.)
- Case law
- Agency regulations
- Executive Orders
- Agency guidance

### California Environmental Quality Act (CEQA) Materials

- CEQA (Pub. Resources Code § 21000 et seq.)
- CEQA Guidelines (14 Cal. Code Regs. § 15000 et seq.)
- Case law
- Agency regulations
- Executive Orders
- Agency guidance

### CEQA Triggers

- State, regional, or local agency discretionary approval, permit, entitlement, license, or decision?
- State, regional, or local agency funding (subsidies, grants, contracts, loans, etc.)?
- Any other form of state, regional, or local agency assistance?

### State, Regional & Local Agencies

- Cities and Counties
- Air Quality Management Districts (AQMDs)
- State and Regional Water Quality Control Boards
- California Dept. of Resources Recycling and Recovery (CalRecycle)
- California Coastal Commission (CCC)
- California Department of Fish and Wildlife (CDFW)
- California Energy Commission (CEC)
- California Department of Forestry & Fire Protection (CalFire)
- State Lands Commission (SLC)
- Regional Planning Agencies
- Dept. of Toxic Substances Control (DTSC)

### ZONING & LAND USE REQUIREMENTS

- Development Agreement
- General Plan Amendment
- Design Review and Plan Check
- Mitigation Fees & Assessments
- Conditional/Special Use Permits

### Federal Agencies

- Environmental Protection Agency (EPA)
- U.S. Fish & Wildlife Service (USFWS)
- U.S. Army Corps of Engineers (USACE)
- Bureau of Land Management (BLM)
- U.S. Forest Service (USFS)
- National Marine Fisheries Service (NMFS or NOAA Fisheries)

### NEPA Triggers?

- Federal permit, approval, or decision?
- Federal funds?
- Federal lands?
- Federal control?

## Frequently Applied Local and State Laws & Regulations

## Frequently Applied Federal Laws & Regulations

### CALIFORNIA DEPARTMENT OF FISH & WILDLIFE (CDFW)

- Fish & Game Code § 1602
- California Endangered Species Act (CESA)
- Lake and Streambed Alteration Agreement (LSAA)
- Incidental Take Permit (ITP)
- TRIGGER:** Potential impacts to the "bed, channel, or bank of, any river, stream, or lake"?
- TRIGGER:** Potential incidental "take" (killing, catching, etc.) of endangered, threatened, or candidate species?
- Timeline: 4-18 months
- Timeline: 9-36 months

### STATE WATER RESOURCES CONTROL BOARD (SWRCB) and REGIONAL WATER QUALITY CONTROL BOARDS (RWQCBs)

#### Porter-Cologne Water Quality Control Act

- Waste Discharge Requirements (WDRs) / National Pollutant Discharge Elimination System (NPDES) Wastewater Permit
- Stormwater Permit (NPDES/WDRs)
- Clean Water Act Section 401 Water Quality Certification
- TRIGGER:** Any point source discharge of "waste" that could affect "waters of the State" or "waters of the U.S."?
- TRIGGER:** Any discharge of stormwater containing "pollutants" to "waters of the State" or "waters of the U.S."?
- TRIGGER:** Any "waters of the U.S." and RHA Section 10 or CWA Section 404 permit?
- Timeline: 6-12 months
- Timeline: 2-6 months
- Timeline: 4-12 months

### CALIFORNIA COASTAL COMMISSION (CCC)

- Coastal Zone Management Act (CZMA)
- California Coastal Act
- Coastal Zone Consistency Certification
- Coastal Development Permit (CDP)
- TRIGGER:** Does project require a federal lease, permit, or license, and will any activities be located in the coastal zone?
- TRIGGER:** Any "development" within the coastal zone?
- Timeline: 4-18 months
- Timeline: 6-36 months

### REGIONAL AIR QUALITY MANAGEMENT DISTRICTS (AQMDs) or AIR POLLUTION CONTROL DISTRICTS (APCDs)

- Federal and State Clean Air Acts
- California Air Resources Board (CARB) or AQMD/APCD Rules & Regulations
- New Source Review (NSR) Permit
- TRIGGER:** Any "major" source of air pollutants?
- TRIGGER:** Any regulated activities and/or emissions?
- Timeline: 2-36 months
- Timeline: 2-36 months

### Frequent Local Agency Permits and Approvals

- Encroachment permit
- Septic system permit
- Water well permit
- Building permit
- Grading permit
- Special use permit
- Conditional use permit
- Tentative Tract Map
- Subdivision Map

### Other Local/State Laws

- FISH & GAME CODE § 1602
- CALIFORNIA ENDANGERED SPECIES ACT (CESA)
- STATE AND REGIONAL WATER BOARDS RULES AND REGULATIONS
- PORTER-COLOGNE WATER QUALITY CONTROL ACT
- SUBDIVISION MAP ACT
- CALIFORNIA COASTAL ACT
- CARB & REGIONAL AQMD RULES AND REGULATIONS
- PROPOSITION 65
- PLANNING AND ZONING LAW
- UNIFORM BUILDING CODE
- UNIFORM FIRE CODE

### CEQA AGENCY TAXONOMY

- Lead Agency:** The public agency with principal responsibility for approving a project. Typically a City or County.
- Responsible Agency:** Any state, regional, or local agency that issues a discretionary approval for a project.
- Trustee Agency:** Any state agency that has jurisdiction over natural resources affected by a project.

### Is activity a "Project"?

### Is Project exempt?

### Identify CEQA Lead Agency

### Does Project require discretionary approvals, funding, or assistance from other agencies?

### Identify all Responsible and Trustee Agencies

### Prepare Initial Study

### Consult with Responsible and Trustee Agencies

### Significant Environmental Effects?

**YES**

**DELAY** Prepare Draft Environmental Impact Report (EIR)

Notice of Preparation

File Notice of Completion & Notice of Availability

Circulate Draft EIR for Public Review

Optional Consultation with State, Regional, Local, and Federal Agencies

Receive Comments from the Public and Agencies

**DELAY** Respond to Comments and Prepare Final EIR

Consider & Certify Final EIR

Adopt Findings & MMRP

Adopt Statement of Overriding Considerations (if needed)

**13-38 MONTHS TO COMPLETE EIR PROCESS**

**NO**

**DELAY** Prepare (Mitigated) Negative Declaration (ND/MND)

File Notice of Intent to Adopt the ND or MND

Circulate ND or MND for Public Review

Optional Consultation with State, Regional, Local, and Federal Agencies

Receive Comments from the Public and Agencies

Consider Comments

**3-9 MONTHS TO COMPLETE ND/MND PROCESS**

Adopt ND or MND

Lead Agency Decision on Project Approvals & Permits

File Notice of Determination

**DELAY** Litigation Defense (as needed)

Apply for Remaining Approvals & Permits from Responsible Agencies

Responsible Agencies Independently Review CEQA Document

Obtain Remaining Approvals & Permits

### CLEAN AIR ACT (CAA)

### CLEAN WATER ACT (CWA)

### ENDANGERED SPECIES ACT (ESA)

### RESOURCE CONSERVATION & RECOVERY ACT (RCRA)

### RIVERS AND HARBORS ACT OF 1988 (RHA)

### MIGRATORY BIRD TREATY ACT (MBTA)

### COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, & LIABILITY ACT OF 1980 (CERCLA)

### NATIONAL HISTORIC PRESERVATION ACT (NHPA)

### SAFE DRINKING WATER ACT (SDWA)

### COASTAL ZONE MANAGEMENT ACT (CZMA)

### BALD & GOLDEN EAGLE PROTECTION ACT (BEGPA)

### EMERGENCY PLANNING & COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

### U.S. FISH & WILDLIFE SERVICE (USFWS) and NATIONAL MARINE FISHERIES SERVICE (NMFS or NOAA FISHERIES)

#### Endangered Species Act (ESA)

- Incidental Take Statement (ITS) through Section 7 Consultation
- TRIGGER:** Federal agency action "may affect" listed species or its critical habitat?
- Timeline: 9-36 months

#### Migratory Bird Treaty Act (MBTA)

- Incidental Take Permit (ITP) through Section 10 HCP Process
- TRIGGER:** No federal agency action and potential incidental "take" (killing, harming, harassing, capturing, etc.) of endangered or threatened species?
- Timeline: 2-6 years

#### Migratory Bird Treaty Act (MBTA)

- Migratory Bird Permits
- TRIGGER:** [P]ursue, hunt, take, capture, kill ... any migratory bird, ... nest, or egg of any such bird.
- Timeline: N/A because permit not available for take, incidental to project development.

### ENVIRONMENTAL PROTECTION AGENCY (EPA) and CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (DTSC)

#### Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- TRIGGER:** Any hazardous materials contamination on site?
- Timeline: 6-36 months

#### Resource Conservation and Recovery Act (RCRA)

- TRIGGER:** Any significant hazardous waste disposed on site?
- Timeline: 4-24 months

#### Toxic Substances Control Act (TSCA)

- TRIGGER:** Any manufacturing, use, processing, distributing, or disposing of regulated materials (PCBs, asbestos, lead, etc.)?
- Timeline: 2-12 months

### U.S. ARMY CORPS OF ENGINEERS (USACE)

#### Rivers and Harbors Act of 1988 (RHA)

- Section 10 Permit
- TRIGGER:** Any obstruction or alteration to "waters of the U.S."?
- Timeline: 6-18 months

#### Clean Water Act (CWA)

- Section 404 Permit
- TRIGGER:** Any discharge of dredged or fill materials to "waters of the U.S." (incl. wetlands)?
- Timeline: 9-36 months

\*Trigger - conditions typically requiring a permit or approval.  
 \*Timeline - the typical time from submittal of a permit application to issuance.

**(Finally) Ready to build...**