

# 2022 CEQA Update



**Daniel Brunton, Counsel, & Clifton Williams, Land Use Analyst**  
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# Introductions: Daniel Brunton / Clif Williams

## Daniel Brunton



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Daniel Brunton focuses his practice on environmental law, with an emphasis on helping developers obtain entitlements for large or controversial projects and defending those entitlements in court.

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As a Land Use Analyst in the San Diego office, Clif Williams works with real estate development and energy clients on complex governmental entitlement and regulatory matters and with governmental entities throughout the western United States.

# Basic Purposes of CEQA

- (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the gov't agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a gov't agency approved the project in the manner the agency chose, if significant environmental effects are involved.

“Because the EIR must be certified or rejected by public officials, it is a document of accountability... The EIR process protects not only the environment, but also informed self-government.”

*(Laurel Heights Improvement Association v Regents of University of California (1988) 47 Cal.3d 376, 392.)*

# CEQA—Key Part of Development Process

- CEQA process can be expensive and time consuming.
- CEQA is the main point of legal challenge for land use decisions and other discretionary decisions by government agencies.



# CEQA—Key Part of Development Process

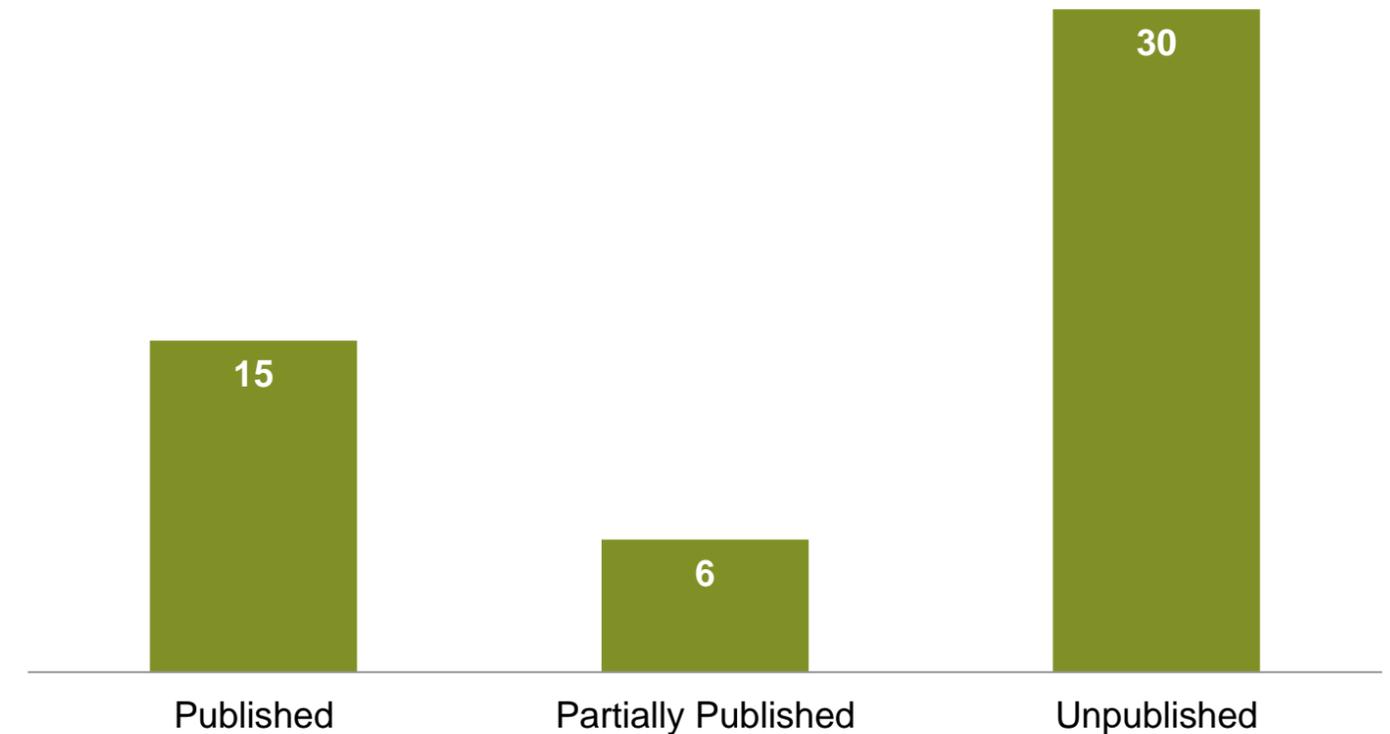
- Litigation is then expensive and time consuming → risk of losing and starting process over.
- Important for public policy and development



# CEQA 2021 Overview

- By the Numbers
  - 51 Court of Appeal opinions
  - One federal district court opinion
  - No California Supreme Court opinion

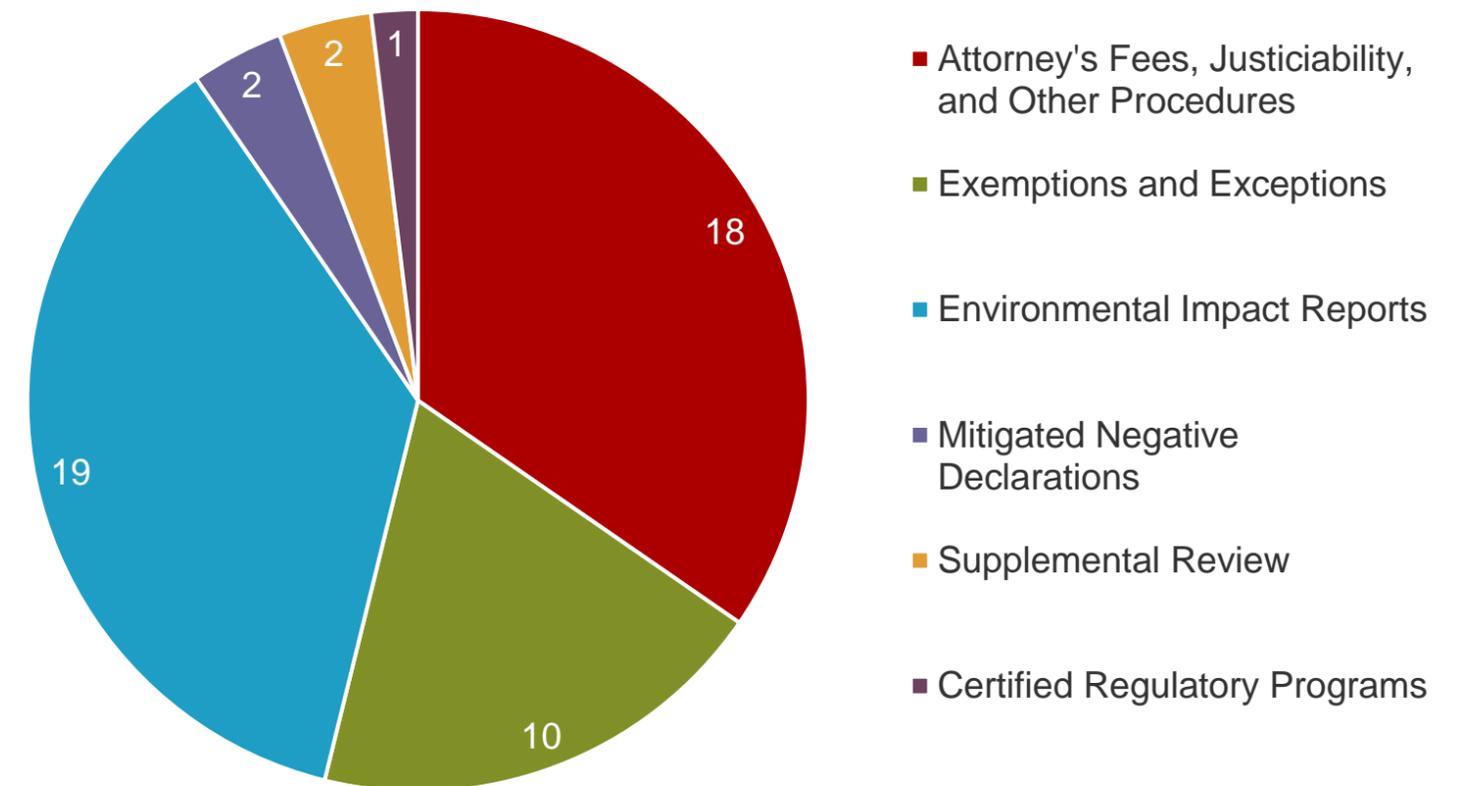
California Court of Appeal Publication Status



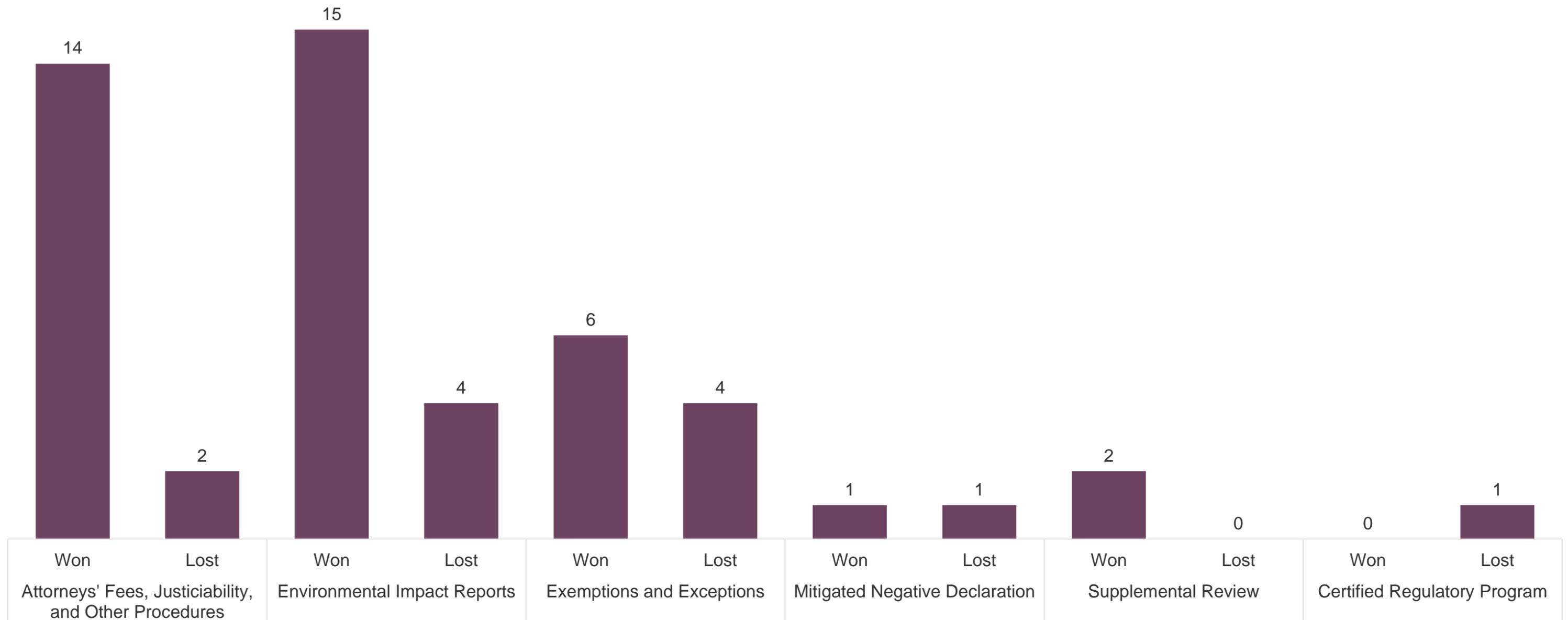
# Data—Subject Matter

- Cases divided in six categories:
  - (1) Attorneys Fees, Justiciability, and Other Procedures
  - (2) EIRs
  - (3) Exemptions and Exceptions
  - (4) MNDs
  - (5) Supplemental Review
  - (6) Certified Regulatory Programs

Cases by Subject Matter

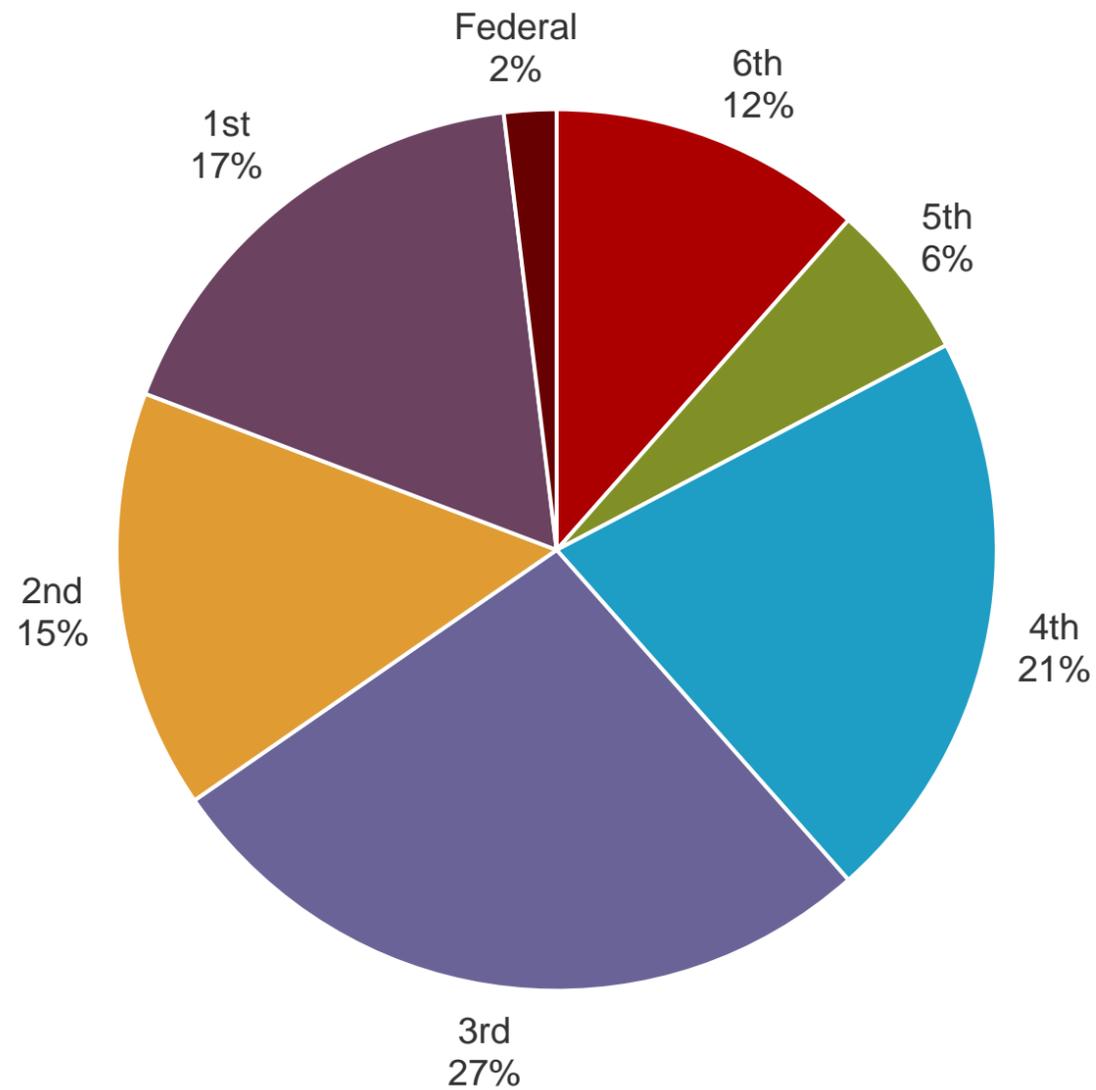


# Data—Public Agency Success

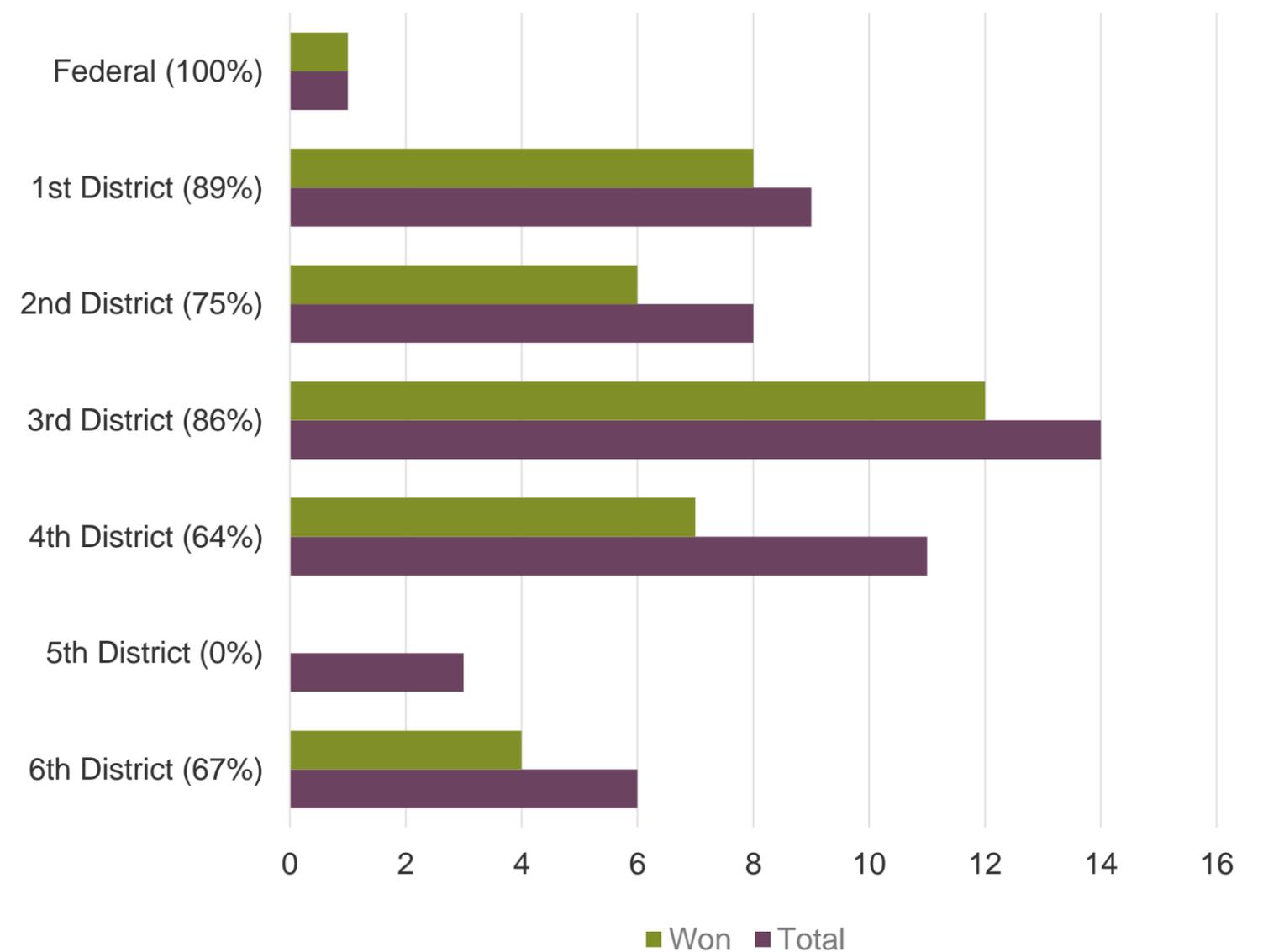


# Data—Overview of Individual Districts

Cases by District



Agency Success by District

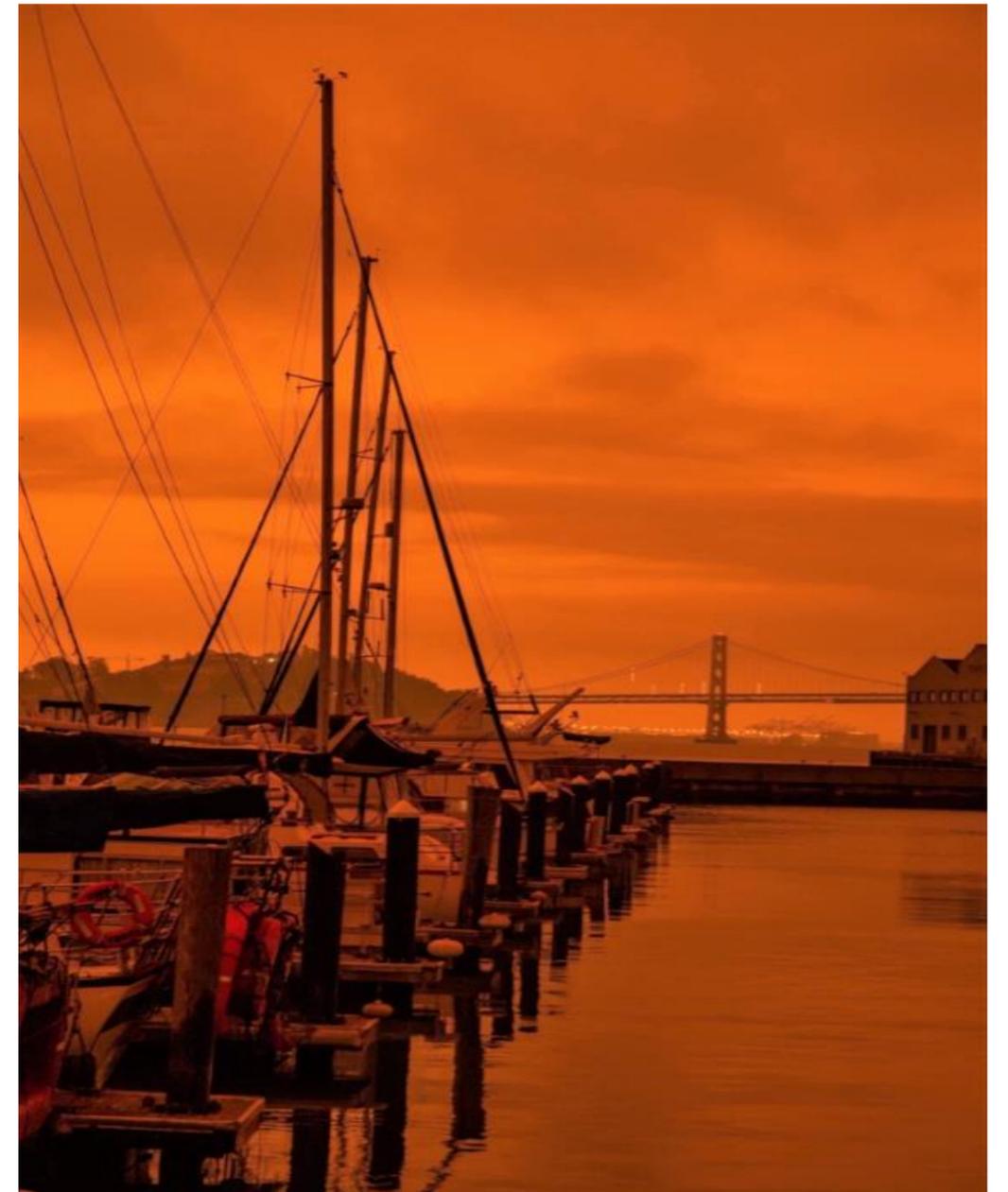


# Emerging Issues in CEQA

- (1) Wildfire
- (2) Greenhouse Gas Emissions
- (3) Vehicle Miles Traveled (VMT) vs. Level of Service (LOS)
- (4) Environmental Justice

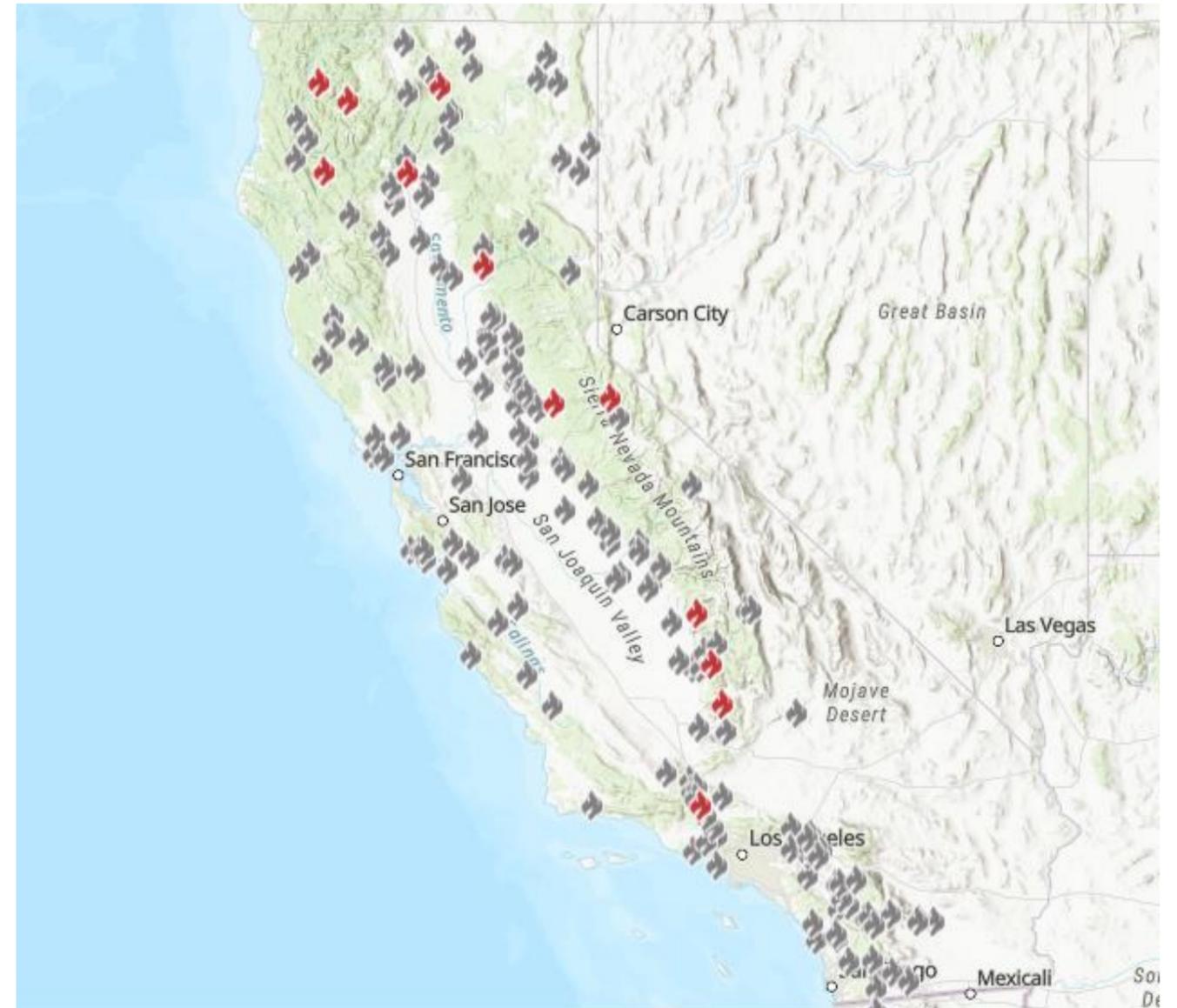
# 2020: Unprecedented Wildfires in California

- California's 2020 fire season was the worst on record (so far)
- Five of the six largest fires ever recorded in California up until that time occurred during the 2020 wildfire season
- “Gigafire”: The August Complex Fire grew to more than 1 million acres, the state's first of that size



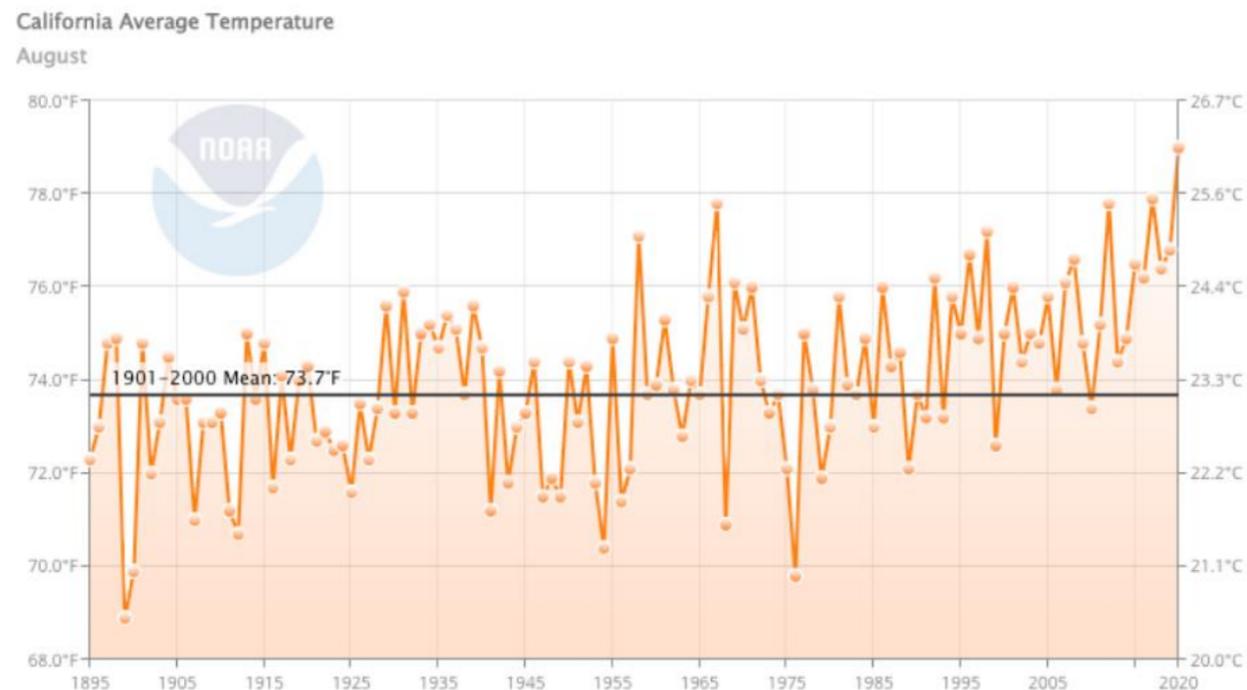
# 2021: Another Bad Year

- Fire season in California started earlier and ended later, according to CalFIRE
- The 2021 Dixie Fire became the second largest fire in California's history

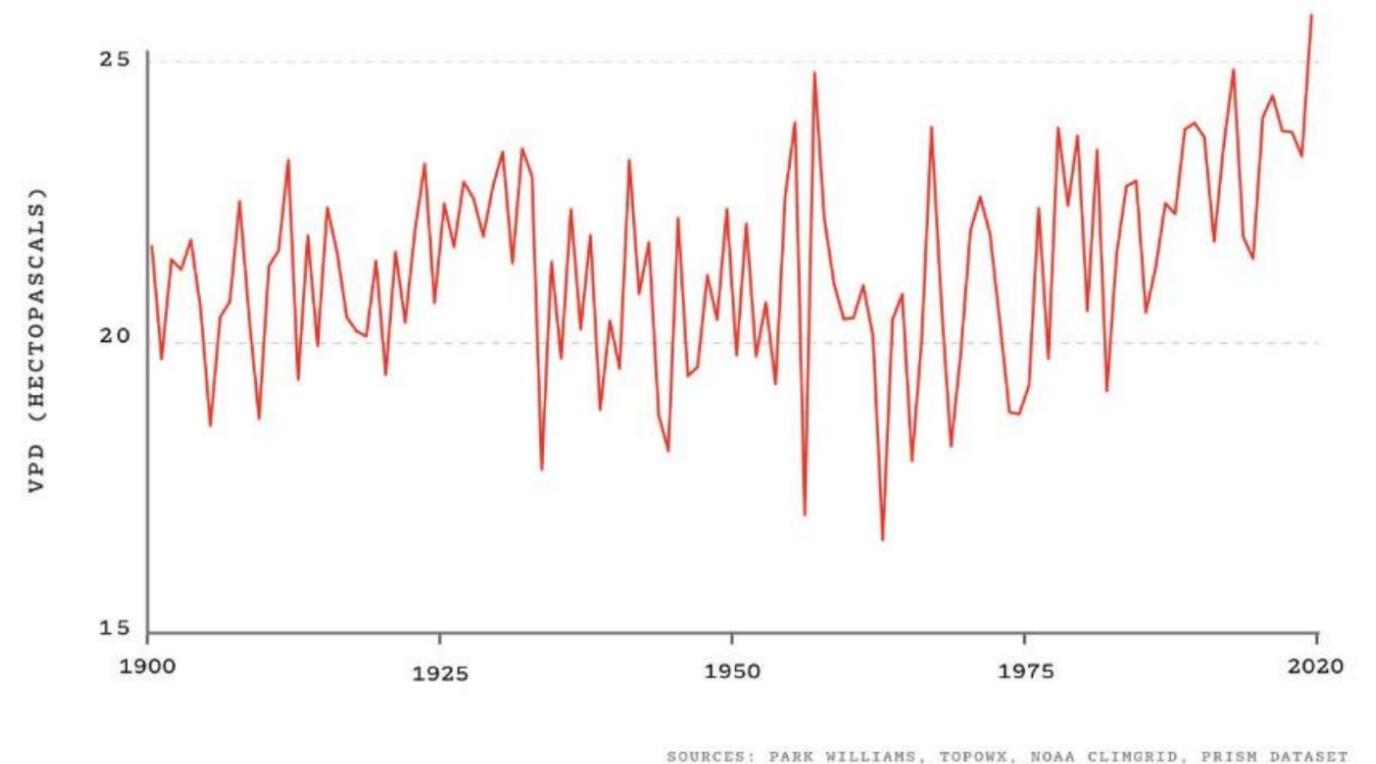


# Climate Change

- **Vapor-Pressure Deficit (VPD):** How much “thirst” the atmosphere has for water.
- A high VPD means more water is pulled from soil, trees, homes, and underbrush.
- This phenomenon helps explain the “explosiveness” of 2020 and 2021 fires.



## California's Vapor-Pressure Deficit is the highest on record



The vapor-pressure deficit in August in California, as calculated by Park Williams

# 2018 CEQA Guidelines Update

- Amended Guidelines Section 15126.2.
  - New Section 15126.2: “The EIR shall also analyze any significant environmental effects the project ***might cause or risk exacerbating by bringing development and people into the area affected.*** For example the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible...wildfire risk areas....”

# *Sierra Club v. County of San Diego (Otay Ranch 14)*

- Otay Ranch 14 project included 1,119 dwelling units, commercial space, space for a fire station, school, parks, and open space
- County of San Diego prepared an environmental impact report
- Attorney General intervened
- Challenges included:
  - Greenhouse gas analysis
  - Wildfire ignition risk
  - Multiple Species Conservation Program
  - The Quino Checkerspot Butterfly
  - Cumulative impacts

# *Sierra Club v. County of San Diego (Otay Ranch 14)*

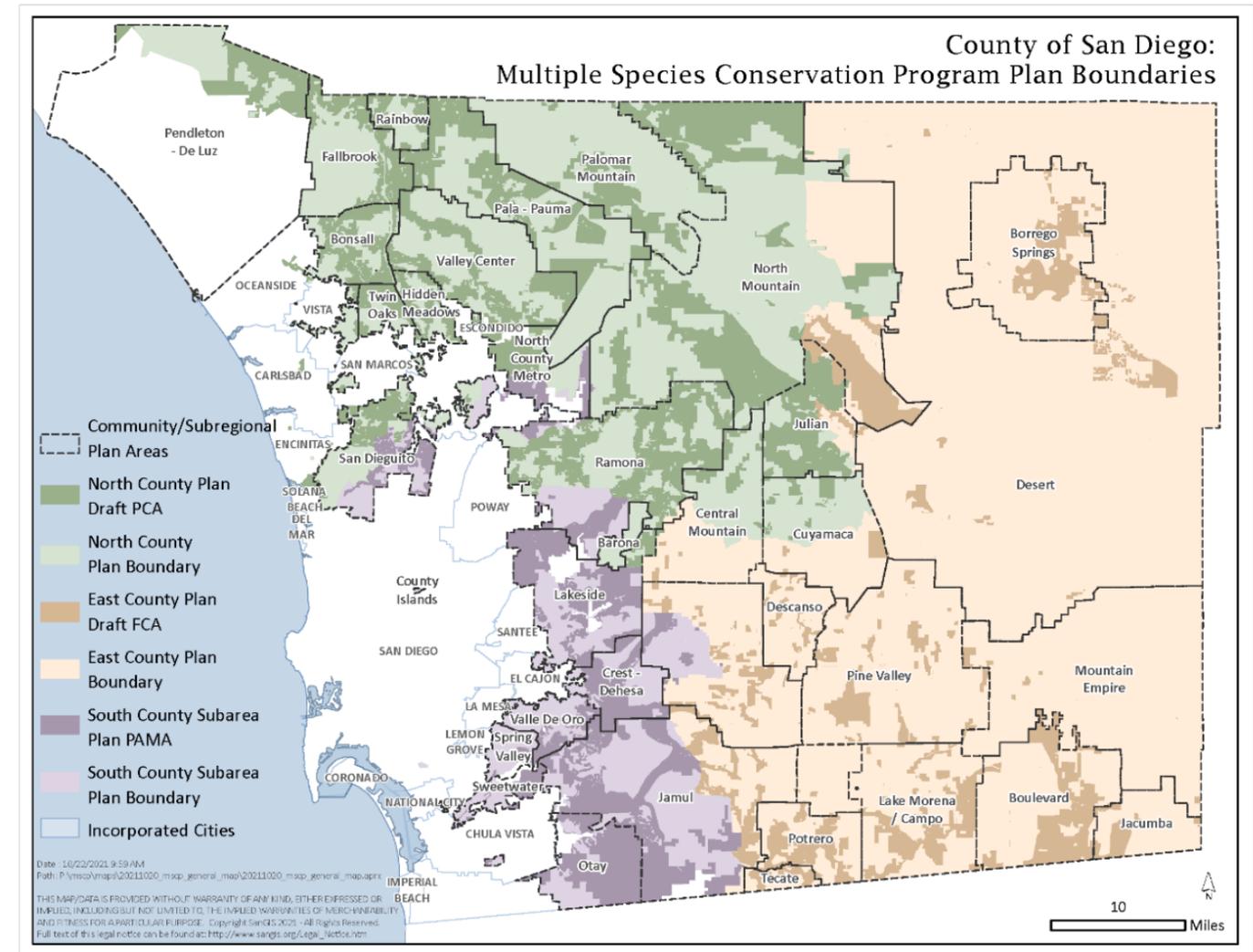
- Greenhouse gas analysis
  - EIR disclosed GHG emissions and found them significant
  - Court found EIR erred by assuming a 30-year life span for project in analyzing GHG emissions—“A 30-year life span for a residential project goes against common sense.”
  - Mitigation was inadequate because it relied on overturned County climate action plan (CAP) and allowed unverified offsets as mitigation
  - The mitigation potentially allowed the use of offsets that did not meet “additionality requirement”—i.e., GHG reductions that would have occurred even without the offset
  - The mitigation allowed the use of out-of-state offsets without the same enforcement as California offsets

# *Sierra Club v. County of San Diego (Otay Ranch 14)*

- Wildfire ignition risk
  - The Court found the EIR improperly failed to “acknowledge the area's designation as a Very High Fire Hazard Severity Zone.”
  - The EIR did not “acknowledge or analyze the impact of adding more than 1,100 new homes to the area as to humans being an ignition cause of wildfires”
  - The Court found that the EIR improperly compressed the “the analysis of impacts and mitigation measures into a single issue”—i.e., it analyzed the project’s impacts only with mitigation

# Sierra Club v. County of San Diego (Otay Ranch 14)

- Multiple Species Conservation Program
  - The Court found the EIR incorrectly described the project as consistent with the MSCP, when the project area was identified in the MSCP as an area where no “take” was allowed



# *Sierra Club v. County of San Diego (Otay Ranch 14)*

- Quino
  - The Court found the EIR deficient for assuming an incorrect baseline—it assumed that the project site was not occupied by Quino Checkerspot Butterfly, even though the Quino had been found on site as recent as 2017, and the EIR relied on data from dry years, when Quino are less likely to be observed

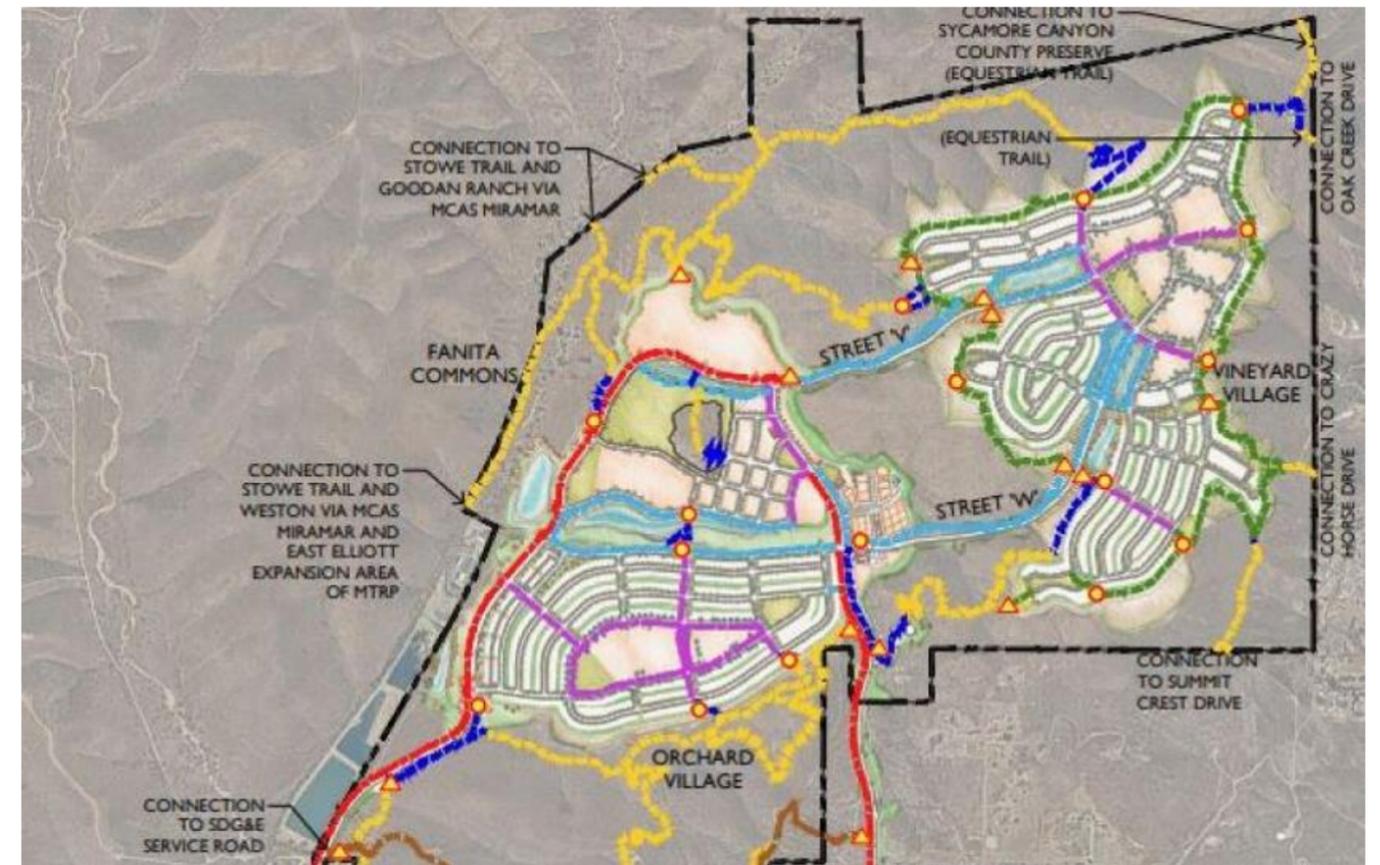


# *Sierra Club v. County of San Diego (Otay Ranch 14)*

- Cumulative impacts
  - The EIR failed to consider in the cumulative impacts six pending residential projects, entailing 10,000 housing units
  - The County argued they were not relevant “based on geographic location, the assertion some of the projects have not sufficiently crystalized, and the projects were not closely related to” the Otay Ranch 14 project
  - The Court rejected this argument, especially as to wildfire risk, air quality, and GHGs

# Wildfire—*Preserve Wild Santee v. City of Santee*

- *Preserve Wild Santee v. City of Santee*
- Fanita Ranch project
- City prepared environmental impact statement
- Project part of Santee's plans since incorporation in 1980
- Includes 3,000 homes, powered mainly by onsite solar, 76% open space



# Wildfire—*Preserve Wild Santee v. City of Santee*

- Wildland Fire Evacuation Plan—40 page document
  - Plan identified 3 evacuation routes, but Court found one of them (Mast Boulevard) was contradicted by evidence in the record
  - Court found plan inadequate because it did not model evacuation during different traffic scenarios
  - No analysis of evacuation times
  - No analysis of how residents who sheltered in place would be save
- Responses to comments regarding evacuation times during fire were inadequate
- Removal of “primary evacuation route” (Magnolia Ave.) without opportunity for public to comment was error

# Green House Gas Emissions

- Greenhouse Gas Emissions
  - California policy → Global Warming now settled science.
  - California has passed various legislative requirements to reduce GHGs. The CARB 2017 Scoping Plan aims to reduce GHGs by 40% below 1990 levels by 2030 with a goal of 80% reduction by 2050.
  - CEQA requires an analysis of how a Project will effect GHG emissions.
  - Jurisdictions have created Climate Action Plans that allow a Project to show compliance as a way of determining Impact Significance. (CEQA Guidelines 15183.5)
    - Developers should be diligent in determining whether or not a Climate Action Plan is based on substantial evidence that supports the significance determination.
- Example: City of San Diego vs. County of San Diego

# GHG—CAP Driving Project Location/Features



## CAP CONSISTENCY CHECKLIST QUESTIONS

### Step 1: Land Use Consistency

The first step in determining CAP consistency for discretionary development projects is to assess the project's consistency with the growth projections used in the development of the CAP. This section allows the City to determine a project's consistency with the land use assumptions used in the CAP.

Step 1: Land Use Consistency		
Checklist Item (Check the appropriate box and provide explanation and supporting documentation for your answer)	Yes	No
1. Is the proposed project consistent with the existing General Plan and Community Plan land use and zoning designations?; <sup>3</sup> <u>OR</u>		
2. If the proposed project is not consistent with the existing land use plan and zoning designations, does the project include a land use plan and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing designations?; <u>OR</u>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the proposed project is not consistent with the existing land use plan and zoning designations, and includes a land use plan and/or zoning designation amendment that would result in an increase in GHG emissions when compared to the existing designations, would the project be located in a Transit Priority Area (TPA) and implement CAP Strategy 3 actions, as determined in Step 3 to the satisfaction of the Development Services Department?		

If **"Yes,"** proceed to Step 2 of the Checklist. For questions 2 and 3 above, provide estimated project emissions under both existing and proposed designation(s) for comparison. For question 3 above, complete Step 3.

If **"No,"** in accordance with the City's Significance Determination Thresholds, the project's GHG impact is significant. The project must nonetheless incorporate each of the measures identified in Step 2 to mitigate cumulative GHG emissions impacts unless the decision maker finds that a measure is infeasible in accordance with CEQA Guidelines Section 15091. Proceed and complete Step 2 of the Checklist.

- ✓ San Diego
- ✓ San Marcos
- ✓ Oceanside
- ✓ Carlsbad
- ✓ Oceanside



# County CAP

- County CAP was recently overturned.
- County General Plan required “reduction of community wide” GHGs.
- County CAP allowed for out of area off-sets and therefore not consistent with General Plan.
- CAP performance standard was found unenforceable.
- CAP deferred mitigation of GHG Impacts.

# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51



# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51

- Background:
  - The City approved two sets of projects to convert overhead utility wires into an underground system in several neighborhoods
    - The City found one project set was exempt from CEQA, and a mitigated negative declaration (MND) was issued for the other project set.
  - McCann filed a petition for writ of mandate and a preliminary injunction against both projects
    - McCann's claims mainly focused on the aesthetic impact of the transformers that would be placed on residential streets for the undergrounding projects
  - The trial court denied McCann's petition and injunction; McCann appealed

# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51

- Court's Holdings:
  - McCann's claims challenging the exempted projects were barred because she failed to exhaust the City's administrative remedies present in the Municipal Code
  - The City complied with CEQA when segmenting the citywide undergrounding project into smaller projects
    - Each project was independently functional and did not rely on any other project to operate or rely on any future project
    - "Although similar in nature, each undergrounding project stands alone such that it is not the "first step" toward additional projects and does not "legally compel[ ] or practically presume[ ] completion of another action"

# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51

- Court's Holdings:
  - No substantial evidence supported a fair argument that the MND Projects would have a significant aesthetic impact caused by the three-by-three foot cubed transformers
    - “When considered in the context of existing case law, the aesthetic impact of the transformers falls far short of the significant impact needed to trigger the need for an EIR.”



# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51

- Court's Holdings:
  - Remand is necessary because the City did not complete the required analytical procedure to analyze the MND Projects' consistency with its Climate Action Plan (CAP)
  - CAP involved streamlined review, rather than calculating the GHG emissions for each project
  - CAP Strategies:
    - (1) requiring energy and water efficient buildings;
    - (2) providing clean and renewable energy;
    - (3) shifting transportation strategies to deemphasize automobiles;
    - (4) achieving "zero waste" in city landfills; and
    - (5) ensuring "climate resiliency" to deal with the shocks of a changing climate.

# *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51

- CAP uses Climate Action Plan Consistency Checklist
  - Step 1—is the project consistent with City's land use and zoning regulations or would otherwise result in an equivalent or less “GHG intensive” project
  - Step 2—is the project consistent with “the applicable strategies and actions of the CAP”
  - Step 3—is the project within a “transit priority area”
- But City essentially screened project out of analysis—“The Checklist expressly states that it does not apply to projects that do not require certificates of occupancy, including the infrastructure projects at issue here, and staff skipped the consistency analysis for these projects.”

# McCann v. City of San Diego (2021) 70 Cal.App.5th 51

- Despite the narrow loss, good language on the City’s CAP:
  - “We agree with the City, based on the record before us, that **projects that are consistent with the Climate Action Plan may rely on that plan for the required project-level analysis of the significance of cumulative greenhouse gas emissions.**”



## CAP CONSISTENCY CHECKLIST SUBMITTAL APPLICATION

- ❖ The Checklist is required only for projects subject to CEQA review.<sup>2</sup>
- ❖ If required, the Checklist must be included in the project submittal package. Application submittal procedures can be found in [Chapter 11: Land Development Procedures](#) of the City’s Municipal Code.
- ❖ The requirements in the Checklist will be included in the project’s conditions of approval.
- ❖ The applicant must provide an explanation of how the proposed project will implement the requirements described herein to the satisfaction of the Planning Department.

Application Information	
<b>Contact Information</b>	
Project No./Name:	<input type="text"/>
Property Address:	<input type="text"/>
Applicant Name/Co.:	<input type="text"/>
Contact Phone:	<input type="text"/>
Contact Email:	<input type="text"/>

# SB 743—Vehicle Miles Traveled (VMT) Analysis for Traffic

## Governor's Office of Planning and Research (OPR) Releases Guidance for Local Jurisdictions to Implement SB 743



- City of San Diego requires a Local Mobility Analysis (LMA) as well as a VMT analysis to bridge the gap between the two paradigms of LOS vs VMT.
- LMA = Operational movement of cars (Nexus to operation.) Safety (Emergency Vehicles).
- City of SD—Preparation of Local Mobility Analysis (LMA) to identify any off-site infrastructure improvements in the project vicinity that may be triggered with the development of the project, as well as to analyze site access and circulation and evaluate the local multi-modal network available to serve the project.
- LMA Impacts could show up in Safety or Public Facilities section of EIR.

# Multiple Tools and Approaches

- VMT efficiency analysis = streamlined review?

Or

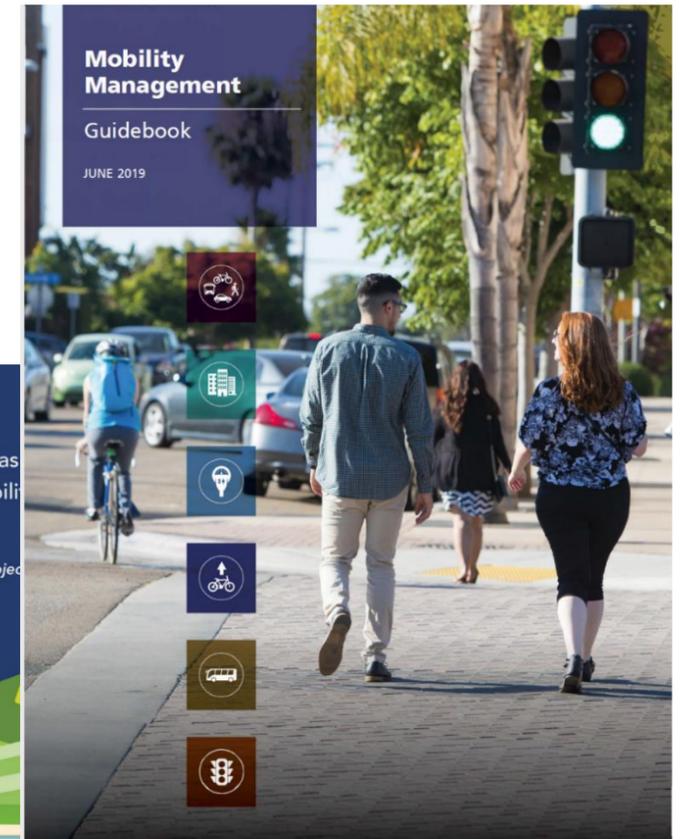
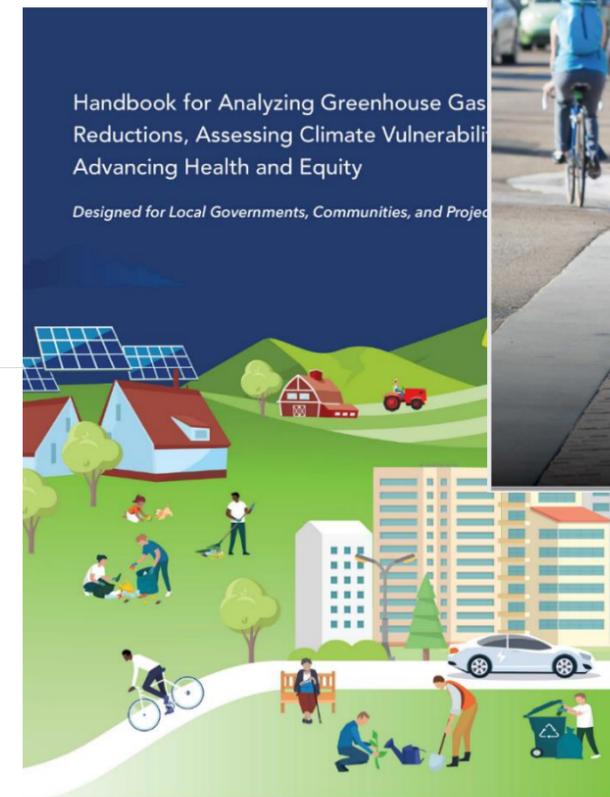
- New tools + new standards = slow review?

Or both?



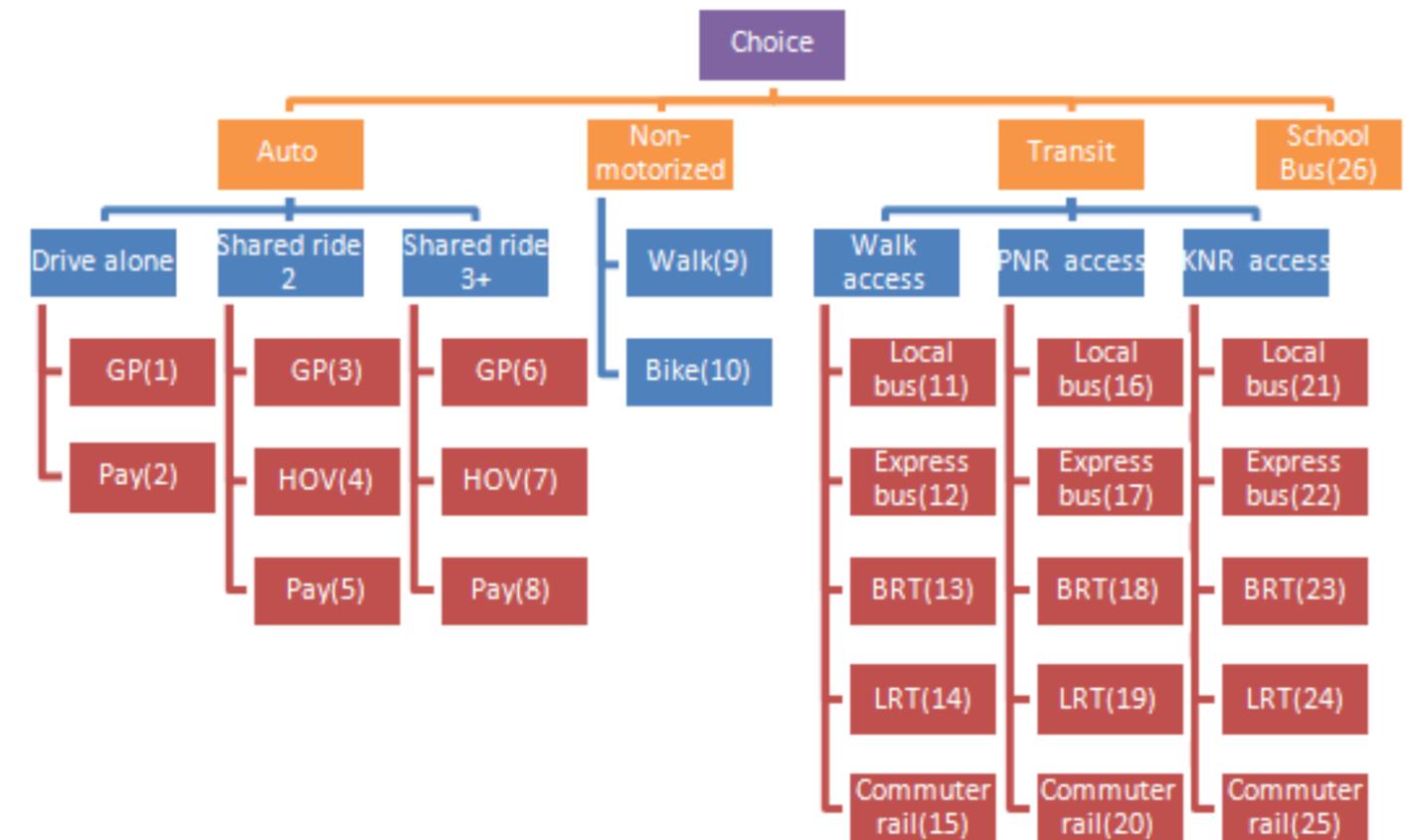
## Transportation Study Manual (TSM)

DATE: 09/29/2020



# Getting to the Right Conclusion can Involve Technical, Policy, and Legal Considerations

- Model sensitive to land uses, future assumptions, date, area, etc.
- Collaboration between staff, technical consultants, entitlement team



# Mitigation

- **Old world:**



- **New world:**

- Tele-commuting
- Bicycle infrastructure/parking/lockers
- Unbundled parking/parking cash out
- Transit encouragement programs
- Carpooling
- Vanpool
- Shuttle
- Dedicated transportation coordinator
- Etc.

# Environmental Justice

- Senate Bill 1000 (2016) required Environmental Justice element in general plans.
- Deadline is when City or County updates two or more general plan elements concurrently on or after January 1, 2018.
  - Jurisdictions in SD County working on this.
  - E.g., City of San Diego expects Environmental Justice element by 2023.



# Environmental Justice

## Completeness Checklist

Statutory Citation	Brief Description of Requirement
Gov. Code § 65302(h)(1)	Identify disadvantaged communities within the area covered by the general plan. (Note: see guidance provided earlier under Step 1)
Gov. Code § 65302(h)(1)(A)	Identify objectives and policies to reduce exposure to pollution including improving air quality in disadvantaged communities.
Gov. Code § 65302 (h)(1)(A)	Identify objectives and policies to promote public facilities in disadvantaged communities.
Gov. Code § 65302(h)(1)(A)	Identify objectives and policies to promote food access in disadvantaged communities.
Gov. Code § 65302(h)(1)(A)	Identify objectives and policies to promote safe and sanitary homes in disadvantaged communities.
Gov. Code § 65302(h)(1)(A)	Identify objectives and policies to promote physical activity in disadvantaged communities.
Gov. Code § 65302(h)(1)(A)	Identify objectives and policies to reduce any unique or compounded health risks in disadvantaged communities not otherwise addressed above.
Gov. Code § 65302(h)(1)(B)	Identify objectives and policies to promote civic engagement in the public decision-making process in disadvantaged communities.
Gov. Code § 65302(h)(1)(C)	Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

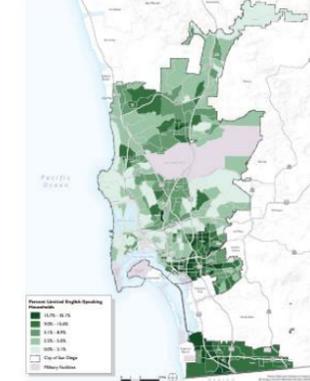
# Env. Justice—City of San Diego Efforts

- Major undertaking collecting data:
  - Community profile
  - Health outcomes
  - Community profile
  - Public facilities
  - Healthy food
  - Save housing
  - Civic engagement
  - Climate change an resilience

## CIVIC ENGAGEMENT & INVESTMENT PRIORITY

### Barriers to Civic Engagement

#### LINGUISTIC ISOLATION (LIMITED-ENGLISH HOUSEHOLDS)



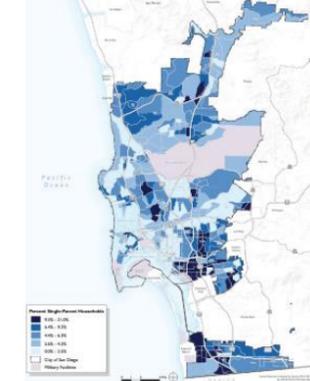
Individuals with limited English-speaking ability (also referred to as linguistic isolation) may not be able to properly communicate their needs or receive vital information to access resources and services. This barrier to access is even more pronounced when an entire household has limited English-speaking ability. In San Diego, as much as 35 percent of a tract's population is linguistically isolated. The most common language spoken in these limited-English households is Spanish.

#### UNEMPLOYMENT



Employment is a central component of financial health and economic mobility opportunity that also has implications on a person's health. According to ACS 2019, 5.8 percent of the city's civilian labor force is unemployed. The census tract with the highest unemployment rate is 20.9 percent, while some census tracts do not have any unemployed civilian population in the labor force. Unemployment is greatest in low income areas, many of which are also places that with higher proportions of linguistic isolation.

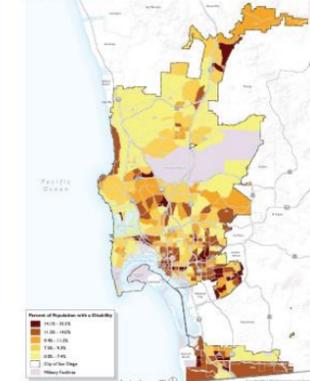
#### SINGLE PARENT HOUSEHOLDS



Given increasing cost of living, maintaining a single-income household can be difficult, especially when supporting children. Single parents may not have the time or be able to afford childcare to be civically involved in their communities. Tracts ranking in the top 20 percent in the state have more than 9 percent of households headed by single parents, many of which coincide with low-income areas. These include neighborhoods in the southeastern and southern parts of the city, as well as some tracts in Clairemont Mesa, Linda Vista, Terrasanta, Mira Mesa, and Rancho Penasquitos.

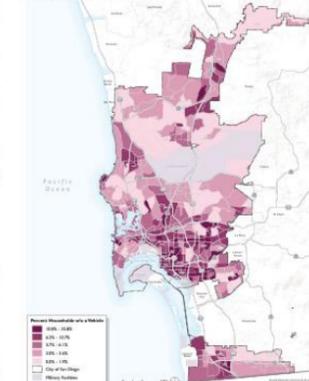
## CIVIC ENGAGEMENT & INVESTMENT PRIORITY

#### DISABILITY STATUS



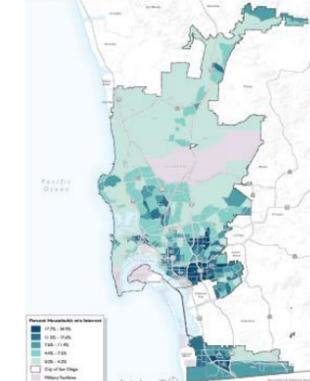
Individuals with a disability may require additional accommodations to allow them to be meaningfully engaged in civic activities. This map shows the percentage of population by tract with one or more disabilities. Tracts in the top 20th percentile statewide occur in communities such as Skyline-Paradise Hills, City Heights, Eastern Area, Southeastern, Downtown, and Clairemont Mesa in addition to neighborhoods south of Chula Vista. In comparison, tracts in the bottom 20th percentile are primarily concentrated in the northwestern end of the city.

#### LACK OF VEHICLE ACCESS



Households without a vehicle may not be able to participate in civic activities due to inability or inconvenience of getting to a location. This is particularly an issue where alternative modes of transportation are not widely available. It is noted that neighborhoods with higher proportions of multifamily residences such as apartments are also likely to have higher proportions of households without a vehicle. Tracts in the city ranking among the top 20th percentile in the state have as much as 35.8 percent of households without a vehicle, and these tracts are primarily clustered in the Downtown, Barrio Logan, Golden Hill, and Southeastern areas.

#### LACK OF DIGITAL ACCESS



The internet plays an increasingly central role in how people get information and connect with one another. This practice has become readily apparent throughout the COVID-19 pandemic, during which many community activities were held online. Households without computers or without internet subscriptions may rely on public resources such as libraries in order to access these platforms. Some tracts in the city have significantly higher proportions of households that do not have internet, and these tracts are highly correlated with low-income areas in the southeastern and southernmost communities, as seen in the map above.

# CEQA Best Practices

# CEQA Best Practices

- Support conclusions with substantial evidence.
  - Technical discussions must be intelligible to an intelligent lay person. If you don't understand the EIR, a judge won't.
  - Include expert bios in all tech reports.
  - Every important assumption should be justified and every important fact should be sourced. The selection of the analytical methodology should be explained.
  - ***Don't do this:*** “The biology consultant was unable to perform a protocol survey, but fairy shrimp are assumed not to exist on the project site.”
  - ***Do this:*** “The biology consultant performed a USFWS protocol survey, the results of which are in Appendix A. Based on the results of this survey, there are no fairy shrimp or fairy shrimp habitat on the project site.”

# CEQA Best Practices

- Avoid sloppiness.
  - Avoid inconsistent assumptions or significance conclusions.
  - Tech reports and EIR should be consistent, both internally and with each other.

# CEQA Best Practices

- Use the right baseline.
  - Use ground-to-plan analysis.
  - ***Don't do this:*** “The project will generate 50,000 less square feet than development under current zoning would allow and therefore will produce less GHGs.”
  - ***Do this:*** “The site is currently vacant. At the end of development, the project would have 200,000 square feet of development generating “X” amount of GHGs. Although this is less than would be allowed under current zoning, based on the GHG analysis the project would add to the existing physical baseline, and is not consistent with the Climate Action Plan and therefore would cause significant impact.”
  - Pandemic and post-pandemic world → potentially tricky baseline issues.

# CEQA Best Practices

- Improper deferral of mitigation.
  - Deferral may be OK if the mitigation measure has a performance standard or lists alternatives for future mitigation, preferably both.
  - ***Don't do this:*** “Prior to construction, the project applicant will prepare an acoustical study demonstrating to the satisfaction of the Community Development Director that noise impacts will be mitigated.”
  - ***Do this:*** “Prior to construction, the project applicant will prepare an acoustical plan demonstrating how interior noise levels will be reduced to 45 dBA. The plan may include the use of dual-pane windows, sound insulation, or other techniques, and shall be approved by the Community Development Director and implemented during construction.”

# CEQA Best Practices

- Use of a de minimis or approach.
  - “One molecule is not the rule,” but a contribution to an existing environmental problem is not less than significant just because it is small.
  - ***Don’t do this:*** “The project area is in severe non-attainment for PM10, but the project will only contribute a very small fraction of the area’s overall PM10 emissions and will therefore have a less than significant impact.”
  - ***Do this:*** Discuss with consultants and public agency. This might work: “The project area is in severe non-attainment for PM10. However, the project is consistent with the land uses contemplated in the State Implementation Plan, the implementation of which will result in attainment of the ambient air quality standards. Therefore, the project emissions of PM10 are less than significant.”

# CEQA Best Practices

- Failure to include all aspects of the project.
  - Especially common for offsite infrastructure and future phases to be omitted.

# CEQA Best Practices

- Failure to identify clearly and apply thresholds of significance.
  - EIR should explain why significance threshold was selected.
  - Must have cumulative significance conclusion for each impact.
  - ***Don't do this:*** “The project will add population and housing, but in a manner that is consistent with the City’s overall planning and goals.” And?
  - ***Do this:*** “Impacts to population and housing are less than significant” or “Impacts to population and housing are significant.”

# CEQA Best Practices

- Failure to analyze and properly reject mitigation measures when a project will cause unavoidable significant impacts.
  - It's not enough to call an impact significant and override. Explain why feasible mitigation is not available.
  - **Don't do this:** "The project will have an unavoidable air quality impact during construction and no feasible mitigation measures are available."
  - **Do this:** "The project will have an unavoidable air quality impact during construction. The City evaluated a range of potential mitigation measures, including requiring use of aqueous diesel fuel, paving construction roads, using electrical construction equipment, and requiring construction workers to carpool. For the following reasons, the City determined that these mitigation measures are either infeasible or would not significantly reduce impacts: \_\_\_\_\_."

# CEQA Best Practices

- Failure to analyze impacts of mitigation measures.
  - Self-explanatory; mitigation measures can have impacts, too.
  - ***Don't do this:*** “Mitigation measure 4.1 requires the project applicant to pay for and construct a new freeway interchange.”
  - ***Do this:*** “Mitigation measure 4.1 requires the project applicant to pay for and construct a new freeway interchange. The potential environmental impacts of the freeway interchange are analyzed below.”

# CEQA Best Practices

- Reliance on improper fee-based mitigation.
  - Fee-based mitigation can be OK when there is substantial evidence in record that it will be effective.
  - ***Don't do this:*** “The project will mitigate impacts to agricultural land by paying a mitigation fee to the County. The County plans to develop a mitigation program.”
  - ***Do this:*** “The County has identified the improvements needed to mitigate the project’s impacts and approved a mitigation fee program. The program is fully funded and will result in X enhancements to agricultural land, which will fully mitigate the impacts.”

# CEQA Best Practices

- Failure to include reasonable range of alternatives.
  - Must have reduced density alternative.
  - No project/no build and no project/build under current plans.
  - Good practice is to include a separate alternative designed to reduce each significant impact to below a level of significance (e.g., if traffic is 25% over significance thresholds after mitigation, an alternative that reduces traffic by 25%).

# CEQA Best Practices

- **File those notices!**
  - *Organizacion Comunidad de Alviso v. City of San Jose* (2021) 60 Cal. App. 5th 783
  - If adequate NOD is filed, short statute of limitations runs even when lead agency sent misleading/incorrect notice to community member
  - “We acknowledge that the city violated CEQA by failing to send the second NOD to Espinoza. But the second NOD was properly filed with the county clerk, it provided constructive notice of the correct parties to sue, and plaintiff did not timely amend its petition to name Microsoft.”

# Tips to be “Litigation Ready”

- For larger projects, bring in a land use attorney early in the process to consult throughout the EIR development. Don't wait for litigation.
- Make sure that you respond to every comment with facts and directions to where the information is found in the EIR. Additional information that bolsters the EIR findings can be added during response to comments.
- Pay Attention to the Findings—Draft findings that provide a clear record of how the public agency came to their decision. Add policy information, supporting documents, and references to bolster the record. The Findings become a roadmap for a judge in litigation and can inform the court as to the thinking behind a public agency decision.