



# Practical CEQA for Trail Projects

2013 California Trails and Greenways Conference  
Granlibakken, Tahoe City

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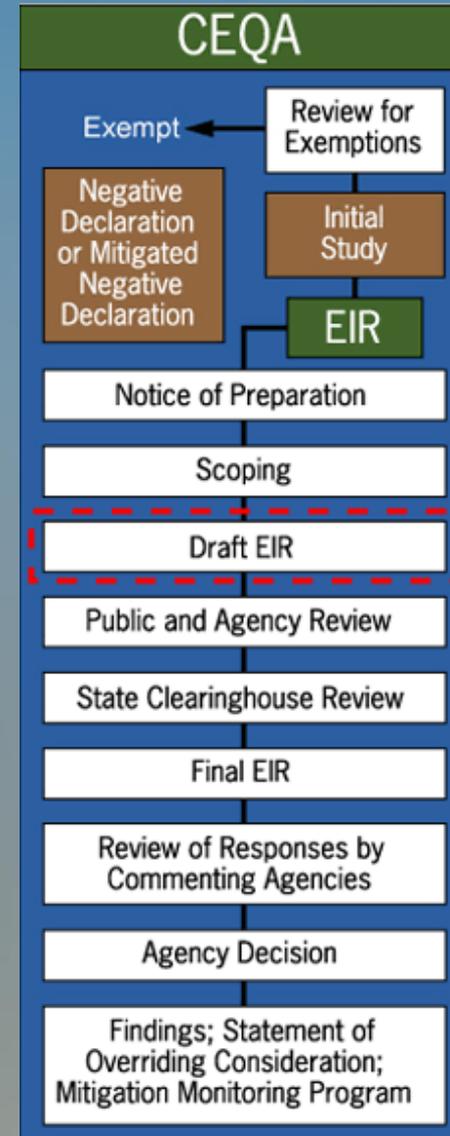
# Speakers

- **Curtis E. Alling, AICP**  
Principal, Ascent Environmental, Inc.
- **Kathryn Tobias**  
Senior Staff Counsel,  
California State Parks



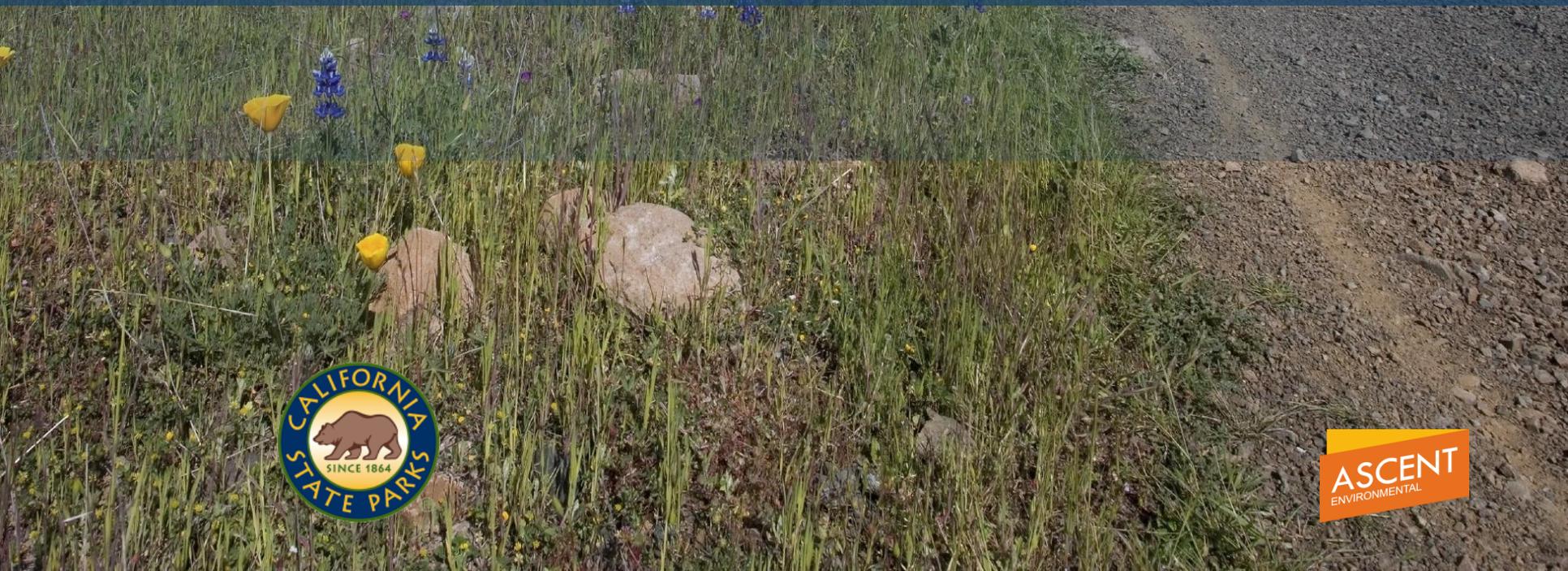
# Topics Today

- A Few CEQA Principles
- CEQA Approaches for Trail Projects
  - Categorical Exemptions
  - Project NDs/MNDs/EIRs
  - Program EIRs
- Typical Trail Environmental Impacts
- Common CEQA Compliance Issues
  - Trail Use Conflicts
  - Uncertainty about Impacts
  - Integrating Design and CEQA Review
- Trail Project Court Decisions





# A Few Key CEQA Principles



# CEQA's Fundamental Premises

- Maintenance of a quality environmental for people is a state goal
- Agencies shall give “major consideration” to preventing environmental damage
- A reasonable, good faith effort at full disclosure of significant environmental impacts is required
- Agencies shall avoid or mitigate significant environmental impacts if it is feasible to do so
- Public review and comment are important at several points in CEQA processes



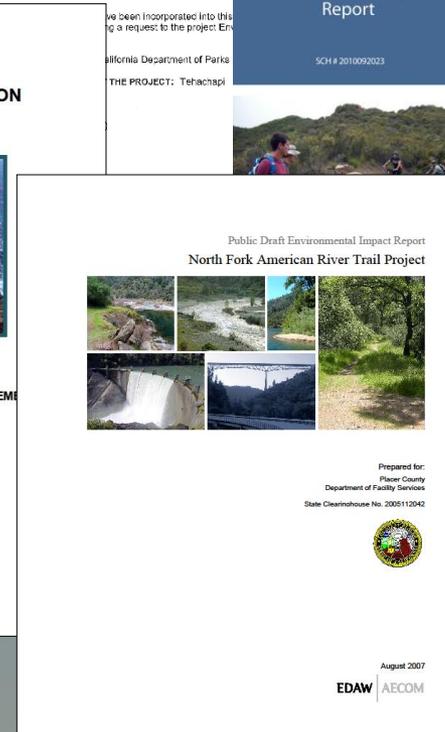
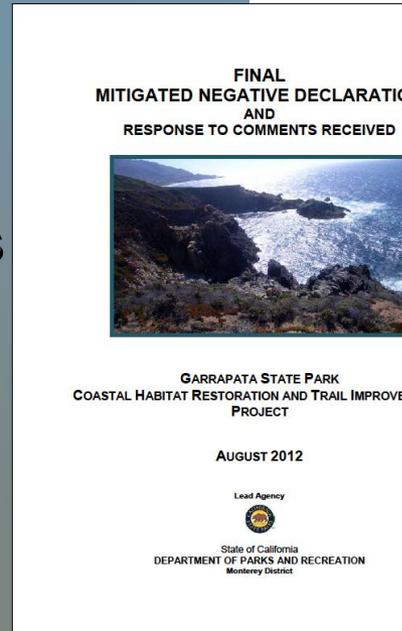
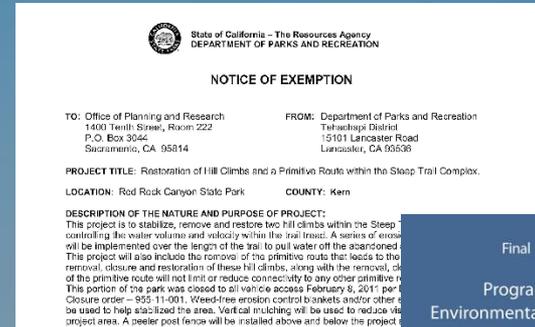
# What is a CEQA “Project?”

- Discretionary action of a public agency (state, regional, local) that has the potential to cause a direct or reasonably foreseeable indirect effect on the physical environment. It can be:
  - Undertaken by the public agency (such as, trail construction)
  - Funded by a public agency
  - Approved by a public agency through a permit, entitlement, or other authorization
- Not a project:
  - Actions of the Legislature
  - Routine administrative activities of government
  - Financing decisions that do not commit to a specific action with changes to the environment



# Types of CEQA Documents

- Exemptions
- Negative Declarations
- Mitigated Negative Declarations
- Project EIRs
- Program EIRs
- Supplemental Reviews



# Fair Argument versus Substantial Evidence Standards

- Fair argument allows concerned citizens and project opponents to hold government's feet to the fire for evaluating potentially significant environmental impacts in an EIR
- Defined: if a lead agency is presented with a fair argument , based on substantial evidence, that a project may have a significant effect on the environment, the agency shall prepare an EIR.
- Substantial evidence standard protects public agencies after they have conducted the detailed evaluation in an EIR.
- Defined: After preparing an EIR, if a lead agency has substantial evidence supporting its conclusion about level of significance, that conclusion will prevail despite other competing evidence and other potential conclusions.



# Substantial Evidence

- There does not need to be much...
- Technical topics appear to need real “study” to achieve substantial evidence
- For non-technical topics, citizen observations may be enough (such as for scenic impacts)
- Defined: facts, reasonable assumptions based on facts, and expert opinion supported by facts
- NOT substantial evidence: argument, speculation, unsubstantiated opinion, erroneous information, evidence of social or economic issues that do not result in physical impacts



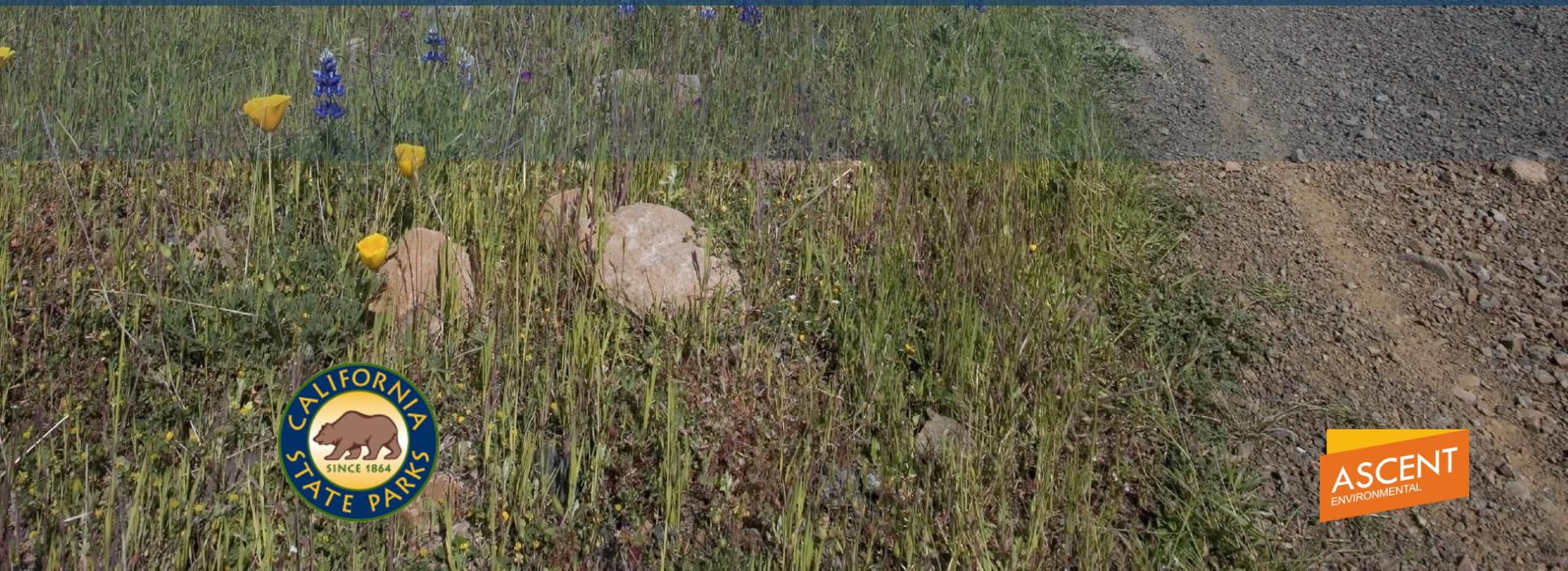
# Significant Effect on the Environment

- **Defined:** Substantial or potentially substantial adverse change in the physical environment
- **Physical environment includes:** land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance
- **What it is not:** social or economic change, by itself, is not a significant effect on the environment





# CEQA Approaches for Trails



# Categorical Exemptions and Trail Projects

- For simple projects that do not cause significant effects
- Common CEQA exemption categories:
  - Class 1 – repair and maintenance of existing facilities
  - Class 3 – new small equipment or facilities
  - Class 4 - minor alterations of land, water, and vegetation
  - Class 11 – minor structures accessory to existing facilities
- Exceptions to the exemptions
- Notice of exemption – FILE IT!



# Negative Declarations and Mitigated Negative Declarations

- For projects with environmental impacts, but not significant effects, or for which potential significant effects can be clearly mitigated
- 6 to 9 month timeframe is common
- Example types of projects:
  - Trail extensions, trail connections
  - New bridges or boardwalks over streams and wetlands (with mitigation)
  - Deferred maintenance projects for campgrounds, day use areas
- Mitigation must be adopted **BEFORE** the MND is released for public review



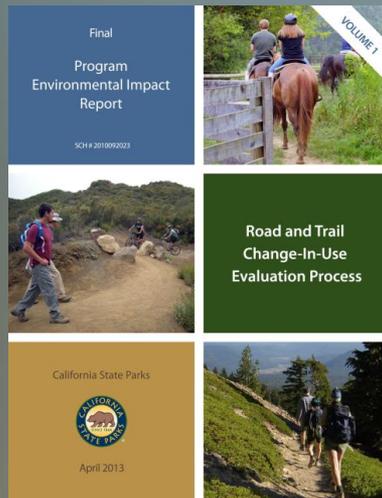
# Project Environmental Impact Report

- EIR that provides enough detail to evaluate and mitigate to the extent feasible all impacts at a project-implementation level
- Includes alternatives analysis, possibly unavoidable, significant impacts
- 12 to 24 months (or can be longer if controversial)
- Example types of projects:
  - Projects encountering endangered species or significant cultural resources
  - Major new trails or larger-scale facilities (visitor centers, new campgrounds, marina)



# Program EIR and Later Activities

- EIR on a series of actions that can be described as one large program
- Address full array of impact issues, evaluate cumulative impacts of entire program, and describe categories of impacts for later activities
- Commit to programmatic mitigation measures
- Later activities consistent with the program are evaluated in light of the Program EIR information; adopt relevant mitigation measures
- Projects fully “within the program” need not have another CEQA document



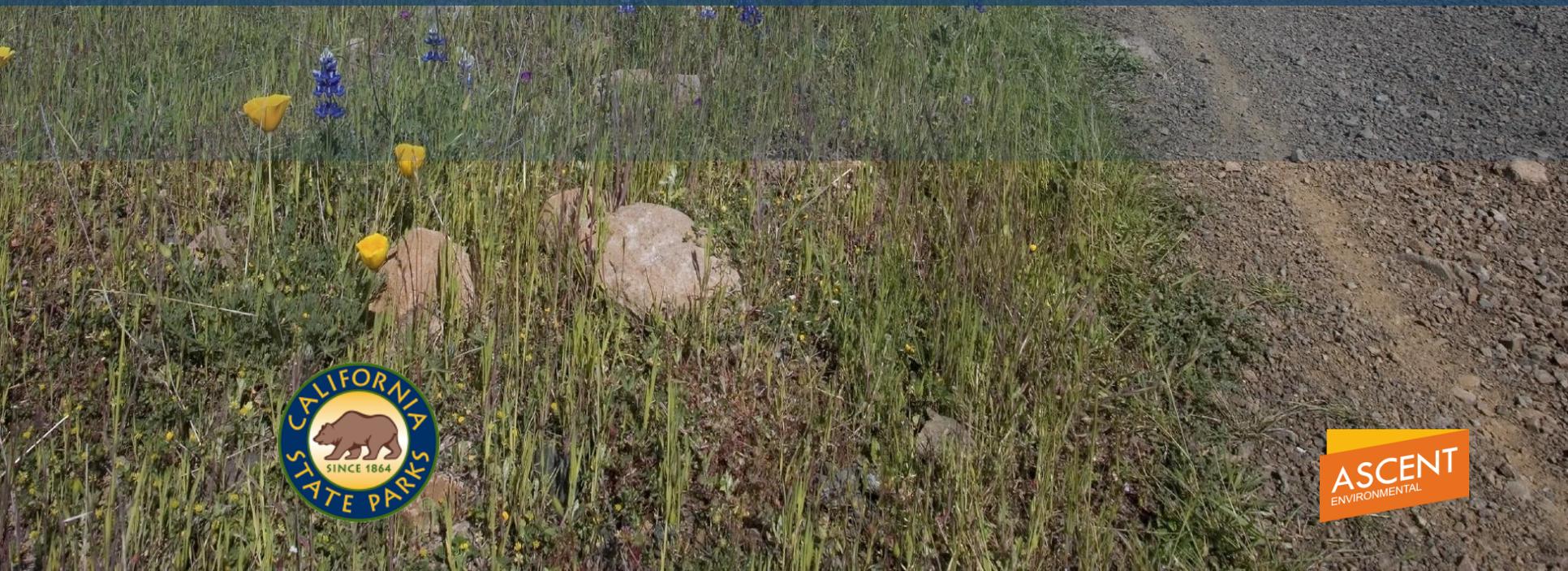
# Road and Trail Change-in-Use Evaluation Process Program EIR

- California State Parks
- Statewide program EIR to establish a consistent and objective road and trail change-in-use evaluation process
- Extensive use of Standard Project Requirements, Adaptive Use Management to avoid impacts
- Certified May 2013
- Qualifying road and trail change-in-use projects reviewed in light of the information in the program EIR

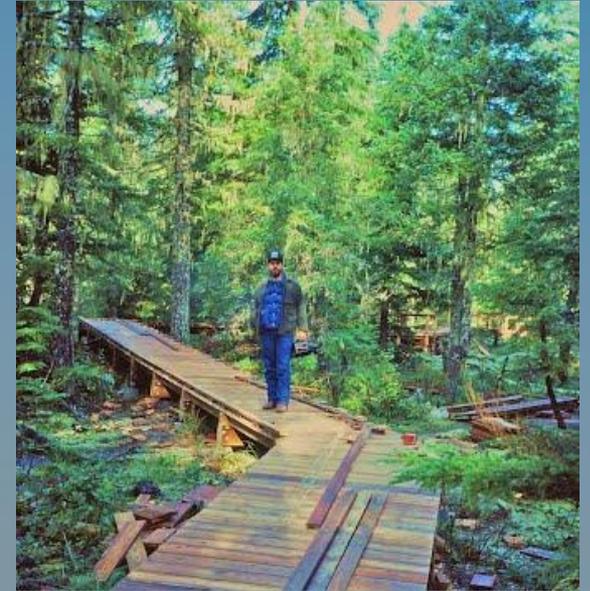




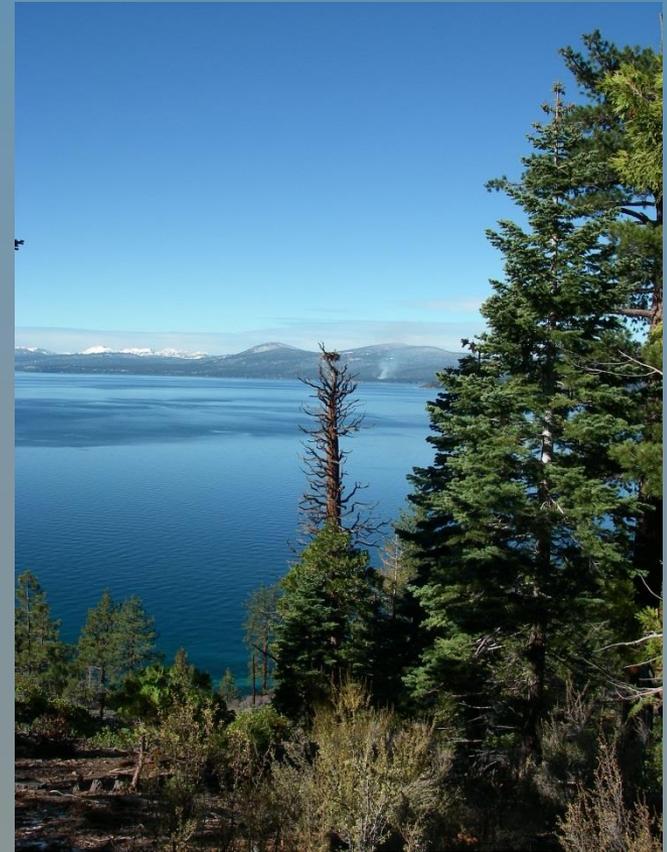
# Typical Trail-Related Environmental Impacts



# Construction Impacts



# Operational and Maintenance Impacts Over Time



# Recreation Use Impacts





# CEQA Compliance Issues for Trails

Trail Use Conflict  
Uncertainty About Impacts  
Integrating Design and CEQA Review



# Does CEQA Address Conflict?

- CSP Policy: multi-use trails
- Key program goal: coordination and collaboration for all users
- CEQA: adverse impacts to physical environment
- Social and economic impacts: only if indirect impact leading to significant direct impact
- Human conflict: social issue not covered by CEQA



## Trail Use Conflict Issues

- Attitude of users – other uses shouldn't be on trail
- Excessive mountain bike speeds
- Inexperienced horses/riders on trail
- Failure of one user to yield to another user
- Horse manure on trails
- Creation of illegal trails or intentional or negligent trail modification



## Other Constraints

Old trails are often problematic:

- old farm/ranch roads
- Logging roads
- Poorly engineered roads
- Erosion issues



# What is “Conflict?”

- Goal interference
- Interpersonal: when conflict is based on physical presence of other users
- Social: when conflict is based on perceptions of another group that may not be present
- So, trail conflict often stems from
  - different users’ lifestyles and values rather than actual trail use or exposure to conflict
  - rumors and anecdotes (e.g., horse knocked off trail)

**Whiskey is for Drinking,  
Water is for Fighting Over**



## Continued: Sources of Conflict

- Attitudes and opinions about “acceptable” modes of travel
- Expectations of encounters with other users
- Attitudes about environment or wilderness
- Level of tolerance for others
- Different norms or stereotypes held by users
- Social values not often directly expressed but instead “explained” by referring to “safety” or the unsuitability of a trail for other users



# CSP Approach to Conflict

- Management actions:
  - Enforcement - posting rules
  - Collecting and tracking data
  - Organized volunteer patrols
  - Assisting in formation of user groups
  - Adaptive management



# Dealing with Uncertainty in Impact Analysis

- Direct physical impacts of trail development is readily predictable
- Recreational use impacts depending on an understanding of current use characteristics and predictions of demand
- Data on existing use is often limited.
- Predictions are infamously an “inexact science,” causing uncertainty
- Response strategy: Incorporate as mitigation observational monitoring compatible with existing ranger or staff duties, with adaptive responses



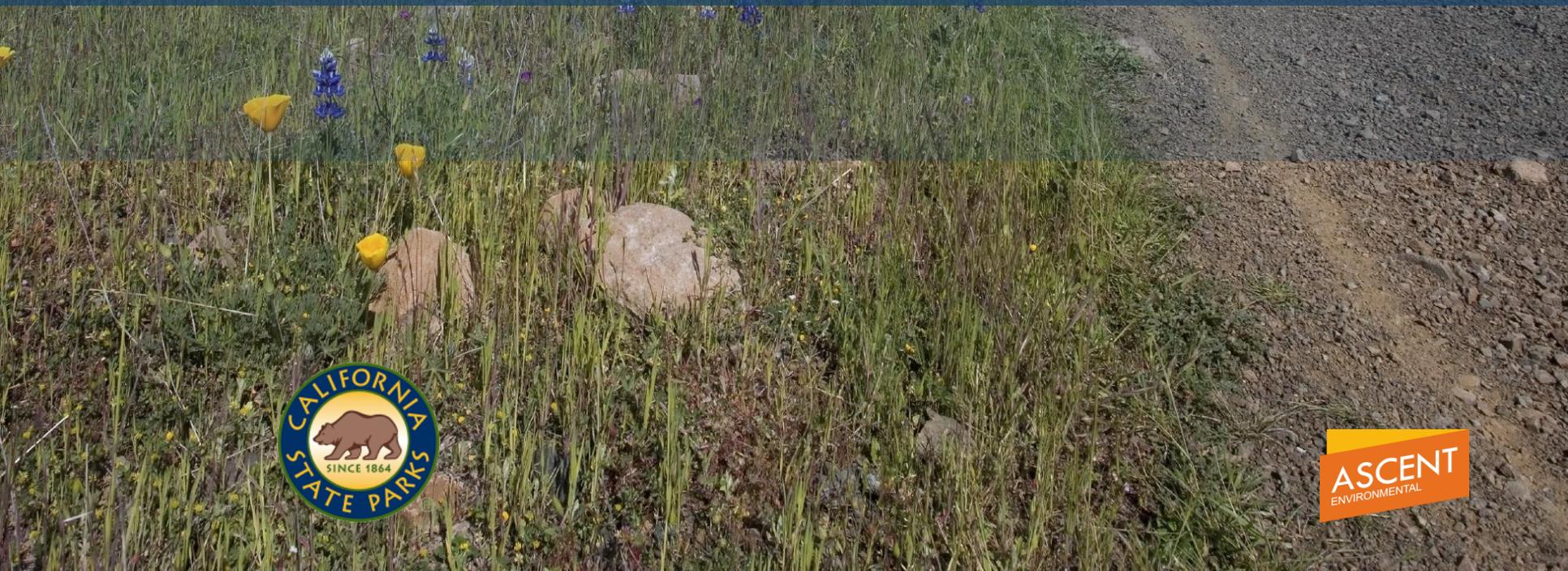
# Integrating Design and CEQA Review - Self-mitigating Trail Design

- Trail design standards provide opportunities for environmentally protective design elements
- If incorporated as part of project design, or performance standards for a future design, project can be “self-mitigating” under CEQA review
- California State Parks Road and Trail Change-in-Use Evaluation Process Program EIR used Standard Project Requirements and Adaptive Use Management to avoid significant impacts or reduce them to less than significance





# CEQA Litigation Related To Trails



# *CNPS v. City of Santa Cruz* (2009) 177 Cal. App. 4<sup>th</sup> 957

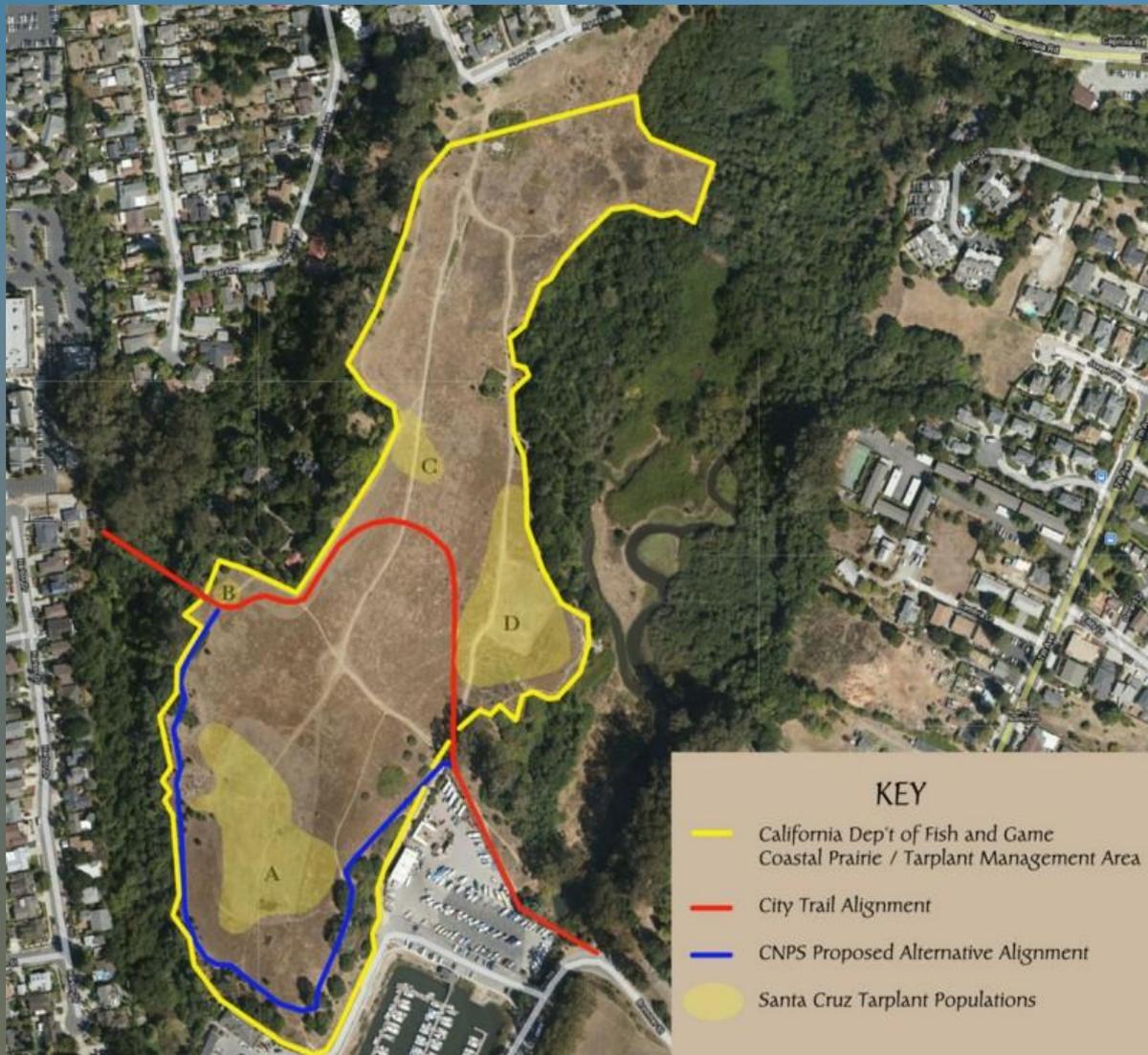
- Alternatives don't have to accomplish all project objectives; conversely, alternatives don't have to satisfy every key objective either
- Two points in process where feasibility is assessed:
  - in alternatives analysis, EIR assesses whether alternative is *potentially* feasible
  - During project approval, *decision-makers* decide whether alternatives are actually feasible





- With respect to request to consider off-site alternatives for east-west bike path, City had considered number of possible offsite routes
  - Project here is master plan for Arana Gulch, not east-west bike path (Concurrence)
  - While off-site bike path might have eliminated need for bike path in Arana Gulch, City still wanted ADA access and high level of public access to Arana Gulch
- City did not have to *choose* environmentally superior alternative, it just had to *consider* environmentally superior alternatives, *explain* considerations that led it to believe that those alternatives were infeasible, *weigh* those considerations against environmental harm that could occur and *make findings* to explain.

# Arana Gulch



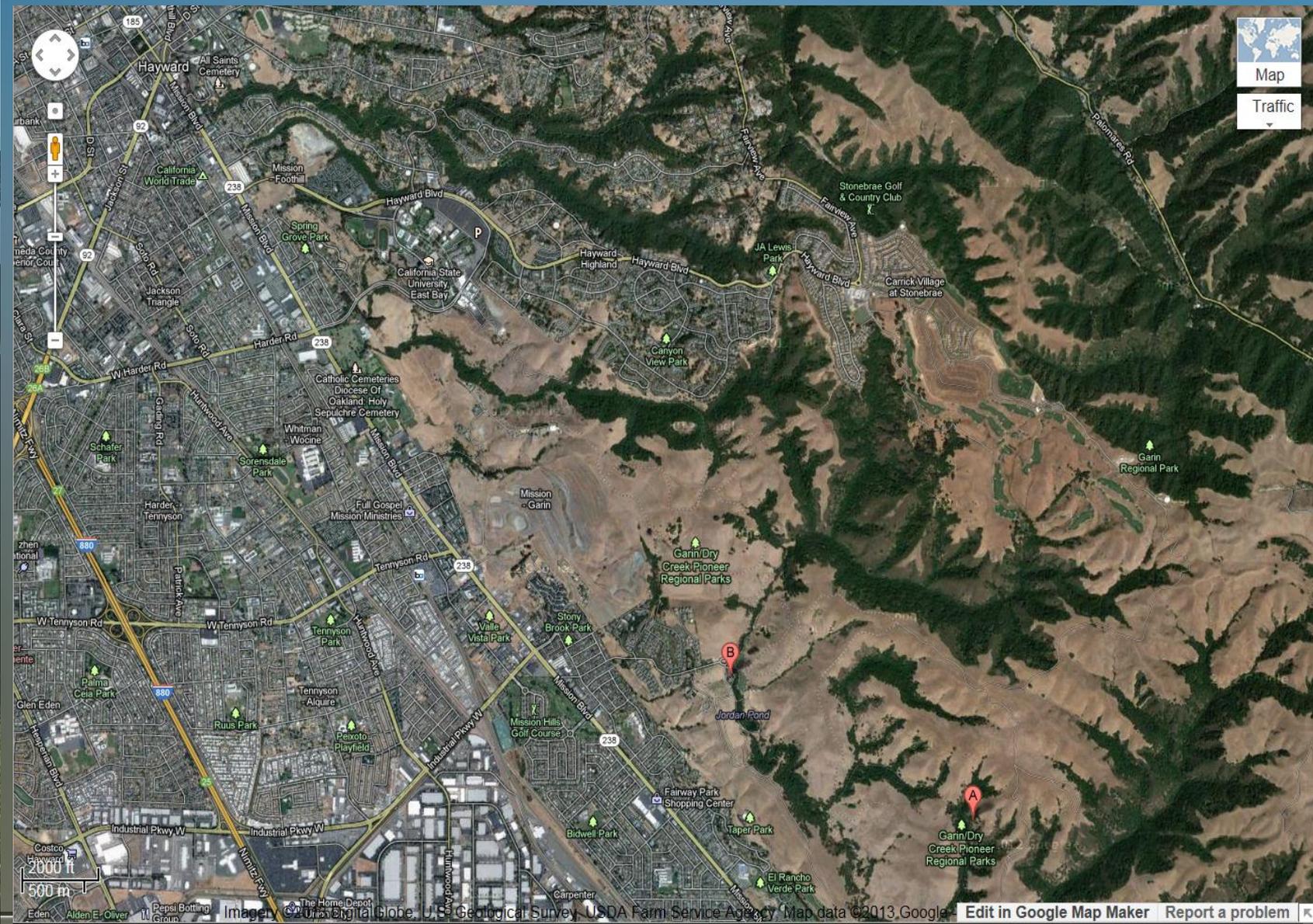
# *City of Hayward v. CSU East Bay*

**May 30, 2012 First App. Dst.**

- Expansion of CSUEB, including enrollment of 18,000 and new student housing project for 600
- Univ. argued that students in housing would make “nominal” use of adjacent parklands because there are ample on-campus facilities – athletic fields, recreation center, swimming pool and grassy fields
- Record showed no evidence of current student use (or anyone else’s use) of parkland or of neighboring parks
- Without any data, not reasonable to assume that informal trails in 130-acre reserve on campus will keep significant numbers of students from making use of neighboring parkland



# City of Hayward



Map  
Traffic

A hiker wearing a blue beanie, a green jacket, and a large blue backpack is walking away from the camera on a dirt trail. The background shows a vast, hazy mountain range under a clear blue sky.

# ***Comm. for Green Foothills v. Santa Clara County***

## **2010 CA. Supreme Court**

- Does the filing of an NOD trigger a 30-day statute of limitation in section 21167, regardless of the type of CEQA violation alleged?
- Determinative answer, for purposes of defining the statute of limitations, is not what type of violation the plaintiff has alleged, but whether the action complained of was disclosed in a public notice.
- When agency gives notice of decision that a project is exempt, public should act promptly
- When an agency does not give the statutorily required notice, and the public is held to constructive notice based on the start of the project, the Legislature has determined that a longer limitations period should apply.
- Moral: agencies - file those NODS! Public: Watch those notices!

# ***Golden Gate Land Holdings, LLC v. East Bay Regional Park District (1st Dist. 2013)***

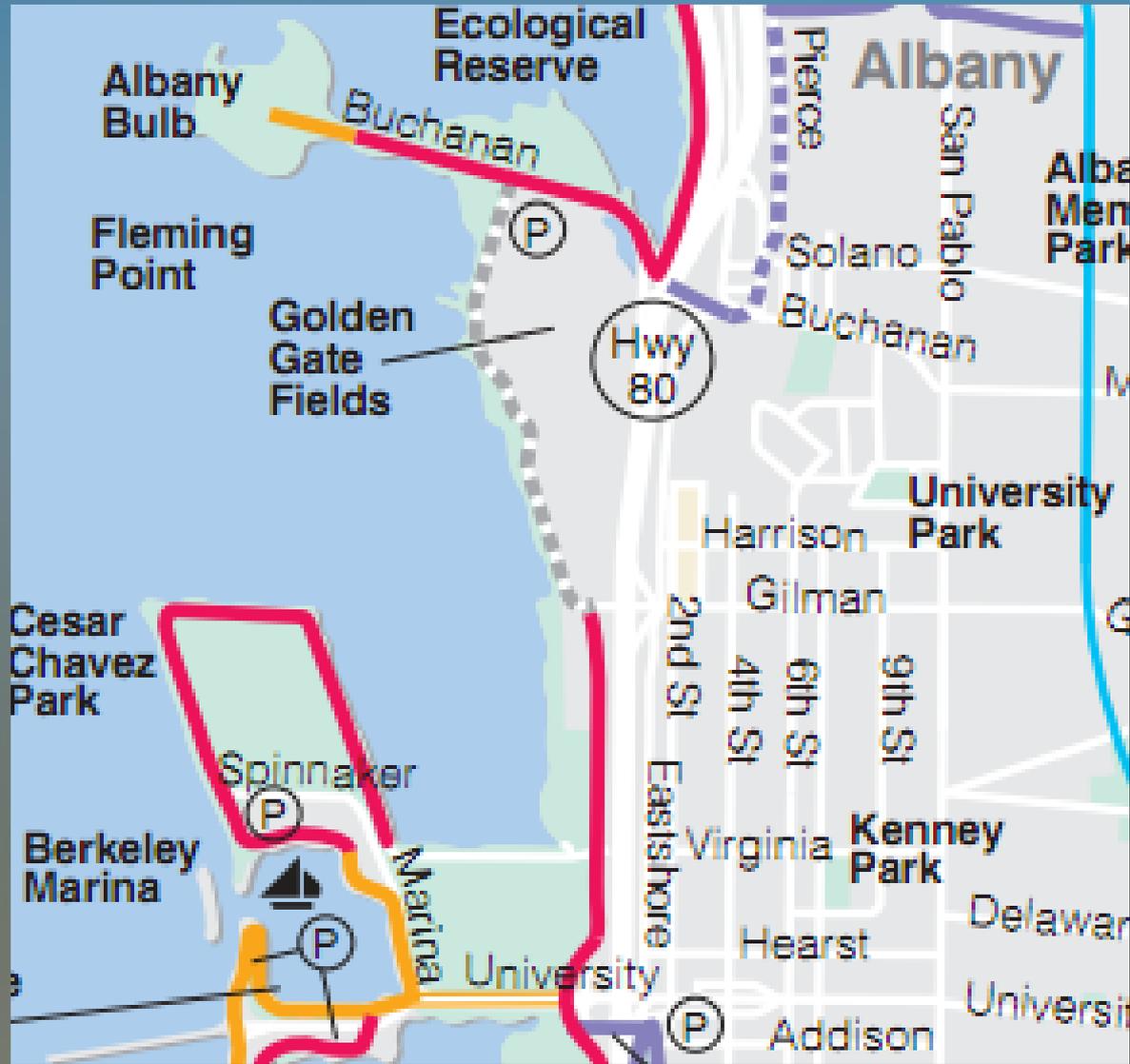
- Not a case that I would recommend following.
- EBRPD condemned property to complete a trail around the SF Bay after other methods failed to allow trail to be completed
- District started condemnation process before completing CEQA
- Public Resources Code § 21168.9, contains key language allowing the trial court to fashion a “limited writ remedy” under appropriate circumstances.



# San Francisco Bay Trail



# Golden Gate Fields Missing Segment





- CEQA's concern with physical changes in the environment differs from eminent domain's concern with ownership of property, and because condemnation without plans to physically change the property would not require an EIR, a bright line is inappropriate
- "Section 21168.9 contains no textual requirement that [required] environmental review be completed before consideration of the severance remedy." "The plain language of the statute" shows that in authorizing a severance remedy, "the Legislature chose to focus on 'project activities,' rather than the 'project' as a whole."

## Future CEQA compliance

- CEQA Guidelines § 15004(a), (b)(2)(A) allow an agency to enter into *land acquisition agreements* when future use of the site is conditioned on CEQA compliance; by parity of reasoning, an agency can presumably initiate condemnation proceedings with actual acquisition conditioned on future CEQA compliance.
- Code of Civil Procedure § 1268.510 allows an agency to abandon the proposed acquisition at any time before it actually occurs.



## Flexible writ remedy

- Public Resources Code § 21168.9 gave the trial court the flexibility to consider equitable principles and tailor its remedy to permit part of the “project activities” – i.e., the eminent domain action – to go forward while the District prepared an EIR to comply with its CEQA obligations.
- Case is distinguished from others
- The Court of Appeal also emphasized that “the facts of the case are unique” and involved “a project for open space preservation and recreational improvements.”





## What if?

1. How does an agency make the finding for the resolution of necessity that the property is necessary for the project without a fully identified project and CEQA?
2. If the environmental review process concludes that more or less property is needed for the project, a great deal of time and effort will be expended. Good use of public funds?
3. What happens if the agency can commence eminent domain proceedings, but it cannot "acquire" the property until it completes its environmental review?



**Questions and Discussion**  
**Thank you!**

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