Staff Workshop:
Focus on LAFCo as a Responsible Agency

Panel:
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California Environmental Quality Act (CEQA) Purposes

- Inform the decision-makers;
- Inform the public; and
- Avoid or mitigate impacts, if feasible.

LAFCo as Responsible Agency:

- Overview of the roles of a responsible agency with discussion of both the basic law and recent developments; and
- Case Studies.

LAFCo’s First Look at Environmental Review is Typically as Responsible Agency:

Commenting on documents prepared by other agencies
LAFCo is the Responsible Agency for:
- Annexations – Guidelines 15051 (b)(2)
- Reorganizations
  (in some cases LAFCo is lead agency)
- Annexation AND Sphere of Influence
  (this can be a gray area)

A Responsible Agency:
- Has some permit authority or other approval power over some aspect of proposed project;
- Relies on the lead agency’s environmental document in its decision-making;
- Provides comments to lead agency; and
- Ultimately makes its own required findings regarding the analyzed impacts.

Responsibilities of Responsible Agencies:
- Lead Agency shall consult with Responsible Agencies before preparing document – (PRC § 21080.3)
- Responsible Agency shall specify to the Lead Agency the scope and content of environmental information that it needs (PRC § 21080.4(a))

Responsibilities of Responsible Agencies (con’t):
- The information specified by the Responsible Agency shall be included in the EIR (PRC § 21080.4(a))
- During public review, Responsible Agency may identify significant impacts and propose mitigation measures (Guidelines § 15204(f))
### Responsibilities of Responsible Agencies (cont’d):

- Responsible Agencies have limited ability to conduct their own environmental review outside the process initiated and managed by the lead agency. *(PRC § 21167.3; Guidelines § 15096)*

- Responsible Agency relies on the lead agency's environmental document in acting on whatever aspect of the project requires its approval. *(Guidelines § 15096(a))*

### Responsibilities of Responsible Agencies cont’d:

- To issue its own findings regarding the feasibility of relevant mitigation measures or project alternatives that can substantially lessen or avoid significant impacts *(Guidelines § 15096)* and related to its statutory mission.

- To issue its own statement of overriding considerations and mitigation monitoring and reporting program. *(Guidelines § § 15096, 15097)*

### LAFCO as a Responsible Agency Case Study:

*Bozung v. Ventura LAFCO (1975) – Genesis of the lead/responsible agency statutory scheme.*

“This is not the case of a rancher who feels that his cattle would chew their cuds more contentedly in an incorporated pasture.”

### Bozung v. LAFCO

*(1975) 13 Cal.3d 263*

- LAFCO approved the annexation of 677 acres of farmland, and thus transferred planning authority from the county to the annexing city;

- County had steadfastly disallowed development, whereas the city had prezoned the site to allow residential, recreational and commercial uses;

- Thus, LAFCO annexation approval was a necessary step in chain of events that culminated in physical impact on the environment.
**Bozung v. LAFCO**
(1975) 13 Cal.3d 263 (cont)

- Under such circumstances, LAFCo could not approve the annexation without first complying with CEQA.
- Even actions that might be disparaged as mere “governmental paper-shuffling” can constitute projects if they “culminate” in physical impacts to the environment.

**General Principles from Bozung:**

- Where a single development project requires multiple agency approvals, all such approvals should be considered within a single environmental document.
- Where a “planning level” decision—annexation or rezone—will indirectly permit land uses not previously permitted in an area, the environmental document for planning decision should address those uses.
- The decision to put infrastructure on the ground should be accompanied by a generalized analysis of the growth likely to follow.

**Key Considerations During Environmental Review**

- Not a Project;
- Statutorily exempt, categorically exempt;
- Type of CEQA Document (neg. dec., EIR):
- Duty to comment;
- Duty to use EIR, expect under limited circumstances (to be covered later); and
- Is it subject to NEPA.

**Not a Project**

*Banning Ranch Conservancy v. City of Newport Beach*—no project piecemealing to avoid CEQA

“[A]n EIR must include analysis of environmental effects of future expansion or other action if:

1) it is a reasonably foreseeable consequence of the initial project; and

2) future expansion or action will be significant in that it will likely change initial project’s scope or nature or environmental effects.”
CEQA Exemptions

When is the project “exempt”?

Certain types of projects are statutorily or categorically exempt from CEQA. The lead agency makes this determination. LAFCo staff should review lead agency determination.

Statutory Exemptions

- Created by statute, not regulation;
- Generally apply regardless of the level of environmental impact; and
- Major examples are:
  - Ministerial actions
  - Actions to prevent or mitigate an emergency
  - Closing of public school or the transfer of students to another school with resulting physical changes would be categorically exempt

Categorical Exemptions

- Created by regulation to Resources Agency pursuant to statutory authority;
- Apply to “classes” of discretionary agency actions supposed generally not to result in significant environmental effects; and
- Subject to “exceptions” that can defeat the exemption.

Categorical Exemption Exceptions:

- Project in a “sensitive environment”;
- Cumulative Impacts will result over time from successive projects of same type in same place;
- Significant impacts will result due to “unusual circumstances”;
- Project may result in damage to scenic resources;
- Site is on a state list of contaminated sites; and
- Project may cause substantial adverse change to a historical resource.
**Common Sense Exemption**

- Even if the project does not fall within a statutory or categorical exemption, CEQA does not apply if: "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Guidelines §15061(b)(3)
- Use of this exemption requires supporting evidence

**Negative Declarations**

**Fair Argument Standard**

**EXAMPLE 1**
- Failure to list LAFCO action in project description.

**EXAMPLE 2**
- Mitigation measure needed to facilitate LAFCO action.

**NOP Example**

- Policy issues
- Types of LAFCO comments

**NOP Letter to Lead Agency**

Guidelines 15096 (b)

- LAFCo is a responsible agency
- Agrees/disagrees with EIR/ND
- Standards of LAFCo review
- Clarify project description
- Scope OK/not OK
- Add alternatives/mitigations
- Contact info
LAFCo-Related Mitigations

Voices for Rural Living v. El Dorado Irrigation District

- LAFCO conditions are binding on public agency;
- Public agency cannot disregard them based on its finding that such conditions are unconstitutional, but instead must seek judicial determination.

Comment on DEIR/Neg. Dec.
Guidelines 15086 (d)

- Focus on shortcomings
- Stay within LAFCO’s expertise
- As specific as possible
- Supported by documentation
- Additional mitigations and alternatives needed

DEIR Example 1—Refine Alternatives or Mitigations

- CEQA document adequacy based on whole project, including responsible agency’s decision.
- Must contain information necessary for LAFCO determination.
- Potentially feasible alternative should have been analyzed.

DEIR Example 1—Refine Alternatives or Mitigations

- LAFCO may condition water use (indirect effect on land use)
- No need to consider reduced development alternative
- LAFCO may not condition land use
DEIR Example 2 – West Patterson Business Park

- Clarify that LAFCo, not City, adopts Sphere Factors analysis in EIR not binding on LAFCo
- Revenue loss to rural fire district
- Sewer treatment capacity
- Vacant/underutilized land survey
- Keep 1:1 agricultural land mitigation

General Plans

- Important to consult/comment
- Usable for spheres and boundary changes
- Positive reinforcement
- LAFCO policies
- Alternatives and mitigations
- Water supply assessments

FEIR Certification Example

FEIR inadequate

- *City of Redding v. Shasta LAFCO (1989)*
  - LAFCO uses lead agency's certified environmental document even if it is being litigated

City of Redding v. Shasta County LAFCo
(1989) 209 Cal.App.3d 1169

- Analyzed extent of a responsible agency’s duty and ability to prepare environmental analysis beyond that produced by the lead agency.
- Court enforced statutory mandate requiring responsible agencies to treat lead agencies’ environmental document as legally adequate even when subject of pending litigation.
- Case describes circumstances where responsible agencies may/must prepare own environ, analysis.
**City of Redding v. Shasta County LAFCo**

- Where a responsible agency believes lead agency has improperly relied on neg. dec. or deficient EIR, it has 3 options under §15096:
  1. Take the matter to court within the applicable statute of limitations period;
  2. Prepare own “subsequent EIR” if permissible §15162; or
  3. Assume lead agency role if permissible §15052.

**Augmenting Environmental Documents at LAFCo**

- Addendum – Guidelines § 15164
- Supplement - Guidelines § 15163
- Subsequent - Guidelines § 15162
  - Substantial changes to project or circumstances
  - New information that could not have known concerning new impact, severity of impacts, or feasibility of mitigations or alternatives

**Changed Circumstances Alleged at LAFCO Hearing Example**


- Decision not to update baseline reviewed for abuse of discretion
- Affirmed City’s decision not to update baseline due changes resulting from Great Recession
- Initial studies—2006/07; FEIR approved—Mar. 2009
- Update problematic due to rapidly-changing economic conditions
- Economic conditions did not affect urban decay findings

**Practical Information**

- Tips for cost-effective ways to augment environmental documents
LAFCo Decision
Guidelines 15096 f-h

- Resolution states that LAFCo considered environmental documents;
- Implement feasible alternatives and mitigations that would substantially lessen impacts;

LAFCo Decision
Guidelines 15096 f-h (con't)

- Make findings for each significant effect;
- Adopt statement of overriding considerations if one or more un-mitigable adverse impacts; and
- Adopt mitigation monitoring program.

After LAFCo Decision
Guidelines 15096 i

- File Notice of Determination with County Clerk within 5 working days of LAFCo action.
- Pay CA Fish and Wildlife fees or Waiver – File Lead Agency Receipt to avoid repayment.

Guiding Principles

- LAFCo shall adopt implementing procedures - § 15022
- LAFCo makes decision based upon CKH
- LAFCo may deny project - § 15042
LAFCO as Lead Agency
Case Study:
- City of Livermore v. Alameda LAFCO (1986)—when LAFCo is a lead agency, e.g., sphere guidelines subject to LAFCo

LAFCo Legal Practices
- Use of legal counsel during responsible agency process

Litigation
What about litigation—ways to avoid?
- passing on defense to applicant?
- getting sued by applicant?
- settlement strategies?

Questions and Comments
- What can a LAFCo do when an agency "drops" a certain mitigation measure during the approval of their EIR?
- opinions about whether commission adoption of an agriculture & open space preservation policy would be considered a project under CEQA.