What’s New With CEQA?
Proposed CEQA Guidelines amendment:
- New Section 15183.3. Streamlining for Infill Projects
  - Sets out a new and curiously complicated path to streamline CEQA analysis for urban infill
    - Codifies provisions of SB 226 of 2011
    - Intended for development projects in urban areas
    - Limited applicability to LAFCo actions, unless an annexation is included
      - Project must be consistent with an EIR previously "certified for a planning level decision of a city or county"

What’s New with CEQA?
- **AB 890** – statutory exemption for road maintenance
- **AB 1486** – statutory exemption for LA communications
- **AB 1665** – statutory exemption for RR crossings
- **AB 2245** – statutory exemption for bike lanes
- **AB 2564** – statutory exemption for natural gas pipeline repairs and maintenance
- **AB 2669** – deletes obsolete code sections
- **SB 972** (Ch. 281, Stats of 2012) – public notice of scoping meetings
- **SB 1241** – revise initial study checklist for fire hazard
Using Other Agencies' CEQA Documents

- When acting as a Responsible Agency, LAFCo must use the Lead Agency's CEQA document
- Unless:
  - LAFCo was not consulted during the CEQA process
  - There is reason to prepare a "subsequent" CEQA document (See Guidelines 15162)
  - LAFCo sues the Lead Agency over the document's adequacy

Taking Action as a Responsible Agency

- Consider the Lead Agency's CEQA document
- Take action on the project
- If approval:
  - Adopt pertinent mitigation measures
  - Adopt findings
    - For an EIR: findings regarding disposition of environmental impacts (Sec. 15091) and statement of overriding considerations if necessary (Sec. 15093)
    - For a NO or MND: finding of no significant impact
  - File Notice of Determination with County Clerk

Subsequent CEQA Document

- When a ND/MND or EIR has been adopted or certified for a project, no subsequent EIR is required unless:
  - Substantial change in the project results in a new or more severe significant effect
  - Substantial change in circumstances results in a new or more severe significant effect
  - Significant new information suggests a new or more severe significant effect

CEQA Guidelines Section 15162
Kinds of Subsequent Documents

- Subsequent EIR — substantial changes to the original EIR
- Subsequent Mitigated Negative Declaration — any new or more severe impacts are mitigated
- Supplement to an EIR — lesser changes to the original EIR
- Addendum — minor technical changes only; requires no public notice or review

CEQA Guidelines Sections 15162-15164
Session 2

LAFCo Responsibilities for Implementing CEQA
LAFCo University
September 14, 2012

Session Strategy

- Identify lead agency or responsible agency requirements as appropriate
- Identify key practices to avoid being caught on a technicality

Session Overview

- Joint responsibilities
  - To meet the requirements of both CEQA and Cortese-Knox-Hertzberg
  - Require a

- Joint Strategy
  - To fulfill both sets of regulations and permit the Commission to make findings and approve actions
Lead Agency/Responsible Agency Concept

State CEQA Guidelines Section 15367

"Lead Agency means the public agency which has the principal responsibility for carrying out or approving a project."

All other agencies with jurisdiction over the project are considered responsible agencies.

Lead Agency CEQA Responsibility

- Complete CEQA Process
- Entirety of Action
- Consult with responsible agencies

Agency Consultation

- Document consultations for both CEQA and Cortese-Know-Parsons in the EIR
- Procedures for consultation required by CEQA
- Agency scoping meeting
- NOI distribution procedures
Types of LAFPco Actions

• Divided into Lead Agency or Responsible Agency
  - Lead Agency
    • Spheres of Influence
    • District Formation
    • City Incorporation
    • Authorization of Late Night Events
    • Municipal Service Reviews
  - Responsible Agency
    • Annexation

LAFPco - Special Situations

• Spheres of Influence
  - Government Code § 56428(b): After complying with the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, the executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given.

• Municipal Service Reviews

Appropriate Level of Review

How closely do we look?
LAFCo - Impacts and Mitigation

- Types of Impacts from LAFCo Actions
  - Secondary
  - Indirect
  - Cumulative
- Limited Ability to Mitigate
  - Prohibition on land use regulation
  - Deferred mitigation, but with mandatory standards of performance

Secondary and Cumulative Impacts

- New area designated from non-subs to urban uses
- Infrastructure extended into area not previously served
- Agricultural preservation policies
- Urban limit policies
- Minimum service delivery policies

Don't Get Hung Up on a Technicality

- Substance
- Required procedures:
  - Noticing
  - Certification
  - Consultation
- Statewide, regional, or area-wide significance
  - Formal scoping meeting
  - Office of Planning and Research submission requirements
  - Substantive to MPO
  - Increased coordination requirements, including Caltrans
- Consistency with other plans and programs
LAFCo Environmental Topics of Interest

- Agricultural Lands (GC 55201) - Definitions (Prime Ag Land GC 55061) Definition)
- Important Farmlands vs. Agricultural Land
- Agricultural Land - Williamson Act/Farmland Security Zones
- Open Space (GC 55950) - The problem is CEQA
- Public Services (effects on both gaining and losing service provider)
- Land use, population, growth and housing (GC 55648)
- Drainage basins and flooding (GC 56648) - Definition
- Environmental Justice/Disadvantaged (Unincorporated Communities (GC 56648)
- Regional Transportation Planning (GC 56648)
- Water Supply (GC 56648)
- Fair Share Housing Requirements (GC 56648)
- Tidal lands or submerged lands (GC 56748)

LAFCo CEQA for LAFCo, September 14, 2012

Responsible Agency CEQA Strategy

- Take Advantage of the Work of Lead Agencies
  - Use the lead agency's CEQA document to arrive at the Commission's own environmental conclusions (Guidelines § 15096)
  - LAFCo CEQA interests are more limited than when acting as a lead agency
  - Make others do the work for both CEQA and Cortese-Knox-Hertzberg findings

LAFCo CEQA for LAFCo, September 14, 2012

Responsible Agency - Duties

- Respond to requests for consultation
- Designate responsible person
- Comment on draft CEQA documents
- Evaluate adequacy of lead agency CEQA document
- Consider CEQA document in agency decision making
- Adopt alternatives or mitigation measures within area of responsibility
- Findings
- Notice of Determination

LAFCo CEQA for LAFCo, September 14, 2012
Responsible Agency

- Limited formal options if lead agency CEQA document does not meet LAFCo's needs.
  - Litigation:
    - Waive any objections
    - Prepare a subsequent CEQA document if permitted under CEQA Guidelines § 15162
    - Project changes leading to new significant effects or substantial increase in severity of previously identified effects
    - Changes in the environment leading to the above
    - New information that could not have been known leading to the above
    - If the lead agency prepared no CEQA document, or the above situation occurs, wait for the statute of limitations to expire, and assume the lead agency role (15062)

Responsible Agency - Be Practical

- Prepare an addendum to address project description or add minor LAFCo topical analyses
- Develop needed LAFCo analyses outside of the CEQA process

Consultant Selection and Management

- Know who you need and what you want them to do
  - Request for Qualifications
    - Request for Proposals
Request for Qualifications

- Prequalification of firms with LAFCo knowledge and experience
- Best if a qualified list is established in advance of need
- Broadly distributed
- Not many firms familiar with LAFCo

Request for Qualifications

- Required Contents:
  - Description of firm, its abilities, and similar experience
  - Description of project management staff, their expertise, and similar experience
  - Overall approach to LAFCo projects and within your jurisdiction
  - Resumes
  - References

Request for Qualifications

- A Statement of Qualifications should include a compelling reason to choose the firm
  - Description of firm, its abilities, and similar experience
  - Description of project management staff, their expertise, and similar experience
  - Description of project technical staff (including likely subconsultants), their expertise, and similar experience
  - Overall approach to LAFCo projects and within your jurisdiction
  - Resumes
  - References
### Request for Qualifications

- **Selection Process**
  - Dependent on staff workload
  - Initially screen to select 5-10 finalists depending on the number of submittals
  - Identify a team to review and score qualifications
  - Use a consistent method of scoring qualifications – score sheet
  - Notify all applicants
  - Be prepared to respond to questions

### Request for Proposals

- **Successful Requests for Proposals**
  - Explicitly describe project and needed services
  - Define known key assumptions
  - Request staff qualifications
  - Request explicit Work Scope, Schedule, and Budget
  - Use Cost Proposal to audit relative contributions of team

### Request for Proposals

- **Contents: Cover Letter**
  - Call attention to important points in the RFP, including submittal instructions
  - Due date and time
  - Submittal process, including address and electronic contact information
  - Page limits, if any
  - Brief description of work requested
  - Reference to contract and/or insurance requirements in RFP
Request for Proposals

• Contents: Body of RFP
  - Detailed submittal procedures
  - Detailed description of project, including maps
  - Detailed description of work to be performed
  - Intended use of the completed work
  - Expected deliverables and schedule, if known
  - Requests for a detailed scope, schedule, budget, assumptions, and exact team that would do the work
  - Specific contract and/or insurance requirements

Request for Proposals

• Distribution of RFP / Pre-proposal Briefing / Accepting RFP Questions
  - Distribution – Only to qualified firms
  - Pre-proposal briefing – optional depending upon unique aspects of the project; offer opportunity to answer questions for a group
  - Questions on RFP – Periodic or in real time
  - Questions on RFP – Answers must be provided to all
  - Questions on RFP – Deadline prior to proposal submittal

Request for Proposals

• Selection Process
  - Prepare a selection criteria scoring worksheet
  - If part of a RFQ process, use the same team to evaluate proposals
  - Select the top proposing firms for interviews
  - Notify selected firms of interview
  - Notify non-selected firms
  - After interviews, notify firms of results
  - Be prepared to respond to questions
  - Provide meaningful feedback
Request for Proposals

- Interview Process
  - Prepare an interview scoring worksheet
  - Use the same team to evaluate interviews
  - Notify interviewing teams of the form of the interview
  - Be explicit about formal presentation/no presentation; audio/video capabilities and expectations; dress code
  - Don't mistake polish for expertise
  - The questions to be answered in the interview include confidence in the technical expertise of the firm and whether they would be efficient, effective, and amenable

Consultant Contracting

- Explicitly define:
  - Consultant's Project Management Team
  - Scope of Work
  - Budget
  - Schedule
  - Negligence
  - Non-performance
  - Acknowledge shared responsibilities

Consultant Management

- You are in charge
- Get it in writing
- Monthly Progress Reports
- Sequence work products
- Review of work products
- Mutual respect
- Recognize differing motives
Commenting on Environmental Documents

- A responsible agency function
- Start early
  - Build a relationship with subsidiary agency staff
  - Initiate outreach and staff education
  - Provide information on LAFCo issues
- Formal CEQA comments on early consultation, NOP, DEIR, follow-up
  - Limited to LAFCo issues
  - Be pleasant

Commenting on Environmental Documents

- Request for early consultation or NOP comments
  - Appropriate CEQA document
  - LAFCo's issues and the detail and quality of information needed for each issue
  - All LAFCo actions cited in project description
- Early consultation or NOP comments should take the form of a formal letter

Commenting on Environmental Documents

- Draft CEQA document comments – How did the lead agency's document handle:
  - Appropriate CEQA document
  - LAFCo's issues and the detail and quality of information needed for each issue
  - All LAFCo actions cited in project description
- Draft CEQA document comments should take the form of a formal letter
Commenting on Environmental Documents

- Other Possibilities for Comments
  - Informal consultation and meeting
  - Review of administrative draft documents

Resources

- Legal Update Blogs and Newsletters
  - Ashken & Kostelanetz: http://www.a-k.com/
  - Boston, Jameson, & Bost: http://newstandardnewsᥰsted/index.html
  - Westlaw: http://www.westlaw.com/technology/environmentaldocuments/

- CEQA Guidelines
  - Available at PDF from State of California: http://www.cpal.org/ceqa/ceqa.html

- Other Resources
  - Sustro Films Books: www.sustro.com
Session 3

Responsible Agency Strategies and Duties
LAFCo University
September 14, 2012

Session Strategy

- Identify responsible agency requirements
- Identify key strategies for maximizing the responsible agency experience

Types of LAFCo Actions

- Divided into Lead Agency or Responsible Agency
  - Lead Agency
    - Sphere of Influence
    - District Formation
    - City Incorporation
    - Authorization of Local Powers
    - Municipal Service Districts
    - Adoption or Modification of Policies
  - Responsible Agency
    - Annunciation

LAFCo University CEQA for LAFCo, September 14, 2012
Responsible Agency CEQA Strategy

- Take Advantage of the Work of Lead Agencies
  - Use the lead agency's CEQA document to arrive at the
    Commission's own environmental conclusions (Guidelines
    § 15069)
  - LAFCo CEQA interests are more limited than when acting as a
    lead agency.
  - Make others do the work for both CEQA and Cortese-Knox-
    Hertzberg findings.

LAFCo Environmental Topics of Interest

- Agricultural Lands (GC § 50010 - Definition, Prior Ag Land (GC § 5004 Definition)) -
  Important Farmland or 5-pronged test
- Agricultural Lands - Williamson Act - Farmland Security Zone
- Open Space (GC § 35540 - The potential in CEQA)
- Public Services (effects on both gaining and losing service providers)
- Land use, population growth, and housing (GC § 35540)
- Drainage, trains, and flooding (GC § 35540) - Definition
- Environmental Justice/Disadvantaged Unincorporated Communities (GC § 35540)
- Regional Transportation Planning (GC § 35540)
- Water Supply (GC § 35540)
- Fair Share Housing Requirements (GC § 35540)
- Floodplains or submerged lands (GC § 35790)

Responsible Agency Duties

- Respond to requests for consultation
- Designate responsible person
- Comment on draft CEQA documents
- Evaluate adequacy of lead agency CEQA document
- Consider CEQA document in agency decision making
- Adopt alternatives or mitigation measures within area of responsibility
- Findings
- Notice of Determination
Responsible Agency

- Limited formal options if lead agency CEQA document does not meet LAFCo's needs.
  - Litigate
  - Waive any objections
  - Prepare a subsequent CEQA document if permitted under CEQA Guidelines § 15162
  - Project changes leading to new significant effects or substantial increase in severity of previously identified effects
  - Changes in the environment leading to the above
  - New information that could not have been known leading to the above
  - If the lead agency prepared no CEQA document, or the above situation occurs, wait for the statute of limitations to expire, and assume the lead agency role (15602)

Responsible Agency - Be Practical

- Prepare an addendum to address project description or add minor LAFCo topical analyses

- Develop needed LAFCo analyses outside of the CEQA process
Effective Categorical Exemptions and Mitigated Negative Declarations

Amanda K. Olekszulin
Ascent Environmental, Inc.

Overview of the CEQA Process
• A CEQA Project is proposed:

  Phase 1  Preliminary Review
  Phase 2  Initial Study
  Phase 3  EIR or ND/MND

CEQA Process Complete

Preliminary Environmental Review
• The Lead Agency undertakes preliminary review:
  – This is usually a quick and informal step
• Determining whether:
  – This action is a "project" under CEQA
  – The project is subject to a CEQA exemption
• If the project is subject to an exemption:
  – Selecting the exemption
  – Documenting the project's "fit"
  – Filing the optional Notice of Exemption
Definition of a CEQA Project

- Project:
  - the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment

- Discretionary:
  - requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity

Activities that Constitute a CEQA Project

- Activities directly undertaken by public agency:
  - public works construction and related activities clearing or grading of land, improvements to existing public structures
- Activities supported through public agency contracts, grants, subsidies, loans, or other assistance
- Activities involving public agency issuance of a lease, permit, license, certificate, or other entitlement

Examples of Non-Projects

- Activities for which "it can be seen with certainty" that no environmental effect will occur
- Activities specifically exempt by state law
- Proposals for state legislation
- Certain continuing administrative or maintenance activities
- Ballot initiatives—initiated by citizen petition
- Government fiscal activities that do not involve any commitment to any specific project
Common Statutory Exemptions

- Ministerial projects
- Emergency projects
- Rejected or disapproved projects
- Setting of certain rates or charges
- Feasibility or planning studies (that do not commit the lead agency to an action with physical effects)

CEQA Guidelines sec. 15260, et seq.

LAFCo-Related Categorical Exemptions

CEQA Guidelines secs. 15301-15315

Optional Notice of Exemption

- A brief description of the project
- A finding that the project is exempt
- Citations to the applicable exemption in the law or State CEQA Guidelines
- A brief statement of reasons supporting the finding
- Why filing an NOE is a good idea – statute of limitations:
  - With NOE: 35 days from filing
  - Without NOE: 180 days from approval, or if no formal approval, commencement of the project
- See CEQA Appendix E

CEQA Guidelines sec. 15062, 15112
MND Definition

An ND "for a project when the IS has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed ND and IS are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (PRC § 21064.5)

Practical Reasons To Prepare an MND

- Environmental planning as part of project design is the best approach
- MND can "reward" good environmental planning with streamlined process
- Lead agency can require applicant commitment to mitigation before MND release
- Time to complete can be quick (3 - 5 months)

Statutory Requirements for an MND

- Not much in the Statute specifically applicable to MNDs
- Impacts must be clearly mitigated (PRC § § 21064.5, 21080[c])
- Statutory notice and processing requirements apply
- Statutory mitigation monitoring requirements apply (PRC § 21081.6)
- Substitution of equivalent or more effective mitigation measures (PRC § 21080[f]i)
**Determining Significance**

Significant Effect on the Environment:
- "Substantial or potentially substantial adverse change to any of the physical conditions within the area affected by the project..."
- "An economic or social change by itself shall not be considered a significant effect on the environment."
- CCR § 15382

**Fair Argument Standard**

- Legal Standard - EIR is required if fair argument exists that a project may have a significant effect on the environment.
- Fair argument must be backed by substantial evidence.
- Generally does not matter how much evidence supports an MND, when a "fair argument" exists.
- If competing evidence exists, lead agency must prepare an EIR.

**Substantial Evidence Supporting the MND**

- MND is the CEQA document.
- Initial Study is the main source of evidence supporting environmental analysis.
- Those documents, and everything else the Lead Agency uses to support them, make up the administrative record.
- Administrative record must support the MND conclusions.
Tools For Determining Significant Effect

- Adopted thresholds per CCR § 15064.7
- "Cumulatively considerable" contributions CCR § 15064(i)
- Mandatory findings of significance PRC § 21083(a), CCR § 15065 (revised 9/04)
- Appendix G checklist questions

Considering Cumulative Impact When Deciding to do an MND

- Definition (CCR § 15355):
  "Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."
  
  "...incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

Required Contents of an MND

- Brief description of the project, location, and proponent's name (CCR § 15071(a,b))
- Proposed finding that the project will have no significant effect (CCR § 15071(c))
- Initial study documenting reasons supporting the finding (CCR § 15071(d))
- Mitigation measures to avoid potentially significant effects (CCR § 15071(e))
Contents Not Required in an MND

- Detailed environmental setting and impacts discussion (unless necessary to support reasoning)
- Alternatives analysis
- Growth-inducing impacts, per se, but be sure to consider indirect effects of growth
- Unavoidable significant or irreversible effects - inherently, neither can exist in an MND!

Statutory Requirements for Initial Studies

- The Initial Study is part of the MND (PRC § 21064.5)
- Identifies potentially significant environmental effects
- Describes measures to avoid or mitigate significant effects
- Provides substantial evidence the project, as revised, will not result in a significant effect

Guidelines Requirements for Initial Studies

- CCR § 15022(a)(2): public agencies procedures for Initial Studies
- CCR § 15063(a): conduct an Initial Study, unless the need for an EIR is clear
- CCR § 15063(b-g): Initial Study results, purpose, content, format and consultation
- CCR § 15073(c): Initial Study must be circulated with the MND
Contents of Initial Studies CCR § 15063(d)

- Project description - location, objectives, characteristics
- Environmental setting (normally conditions at the initiation of environmental review)
- Discussion of environmental effects using Appendix G checklist or another method
- Mitigation measures
- Consistency with zoning, plans, and land use controls
- List of preparers

Practice Pointers for IS/MND Contents

- Use current Appendix G - address the topics in checklist questions at least, but feel free to tailor, add relevant questions
- Include discussion to support all but the most obvious "no impact" conclusions
- Maintain a good in-house information base and complete administrative record
- Include CCR § 15063 content requirements for Initial Study, such as zoning and plan consistency
- No need to overdo it. Skinny MNDs can work when there is no controversy and a limited set of potentially significant issues

CEQA Guidelines on Mitigation

- CCR § 15126.4 provides guidance:
- Measures must be fully enforceable through conditions or other binding instruments
- Mitigation not required for less-than-significant effects
- Measures must comply with principles of "essential nexus" (Nollan v. Coastal Commission case) and "rough proportionality" (Dolan v. City of Tigard case)
- Should not defer formulation of mitigation until some future time, but may specify performance standards
Inadequate Mitigation
- Monitoring without a mitigating response
- Compliance with existing non-discretionary law, such as the Uniform Building Code
- Future study to determine if mitigation measures are needed
- Non-commital verbs in the mitigation, such as "may" do this, or "should" do that

Mitigation Practice Pointers
- ONLY include "mitigation" for potentially significant effects in an MND
- Keep mitigation reasonable, proportional to impacts, and feasible. Be careful to not overburden a project
- Use a numbering or notation system to clearly link impacts and mitigation
- Provide evidence about how measures work
- Use definitive verbs: "will" or "shall", not "may" or "should"
- Prepare a complete description. Follow the what, why, where, how, when and who approach to writing mitigation

Rigorous Mitigation Structure
- BIO-1: Oak Tree Replacement Plan (short title)
- Objective: ... to compensate for the significant loss of oak trees on the project site...
- Description: specific actions or types of actions, location, how they reduce/compensate for impact
- Performance Criteria: ... no net reduction in number of trees after five years...
- Timing: ... prior to grading permit...
- Responsible Party: Project Proponent
- Significance After Mitigation: Less than significant
Deferral of Mitigation Details – A Dilemma

- Time constraints, applicant attitude, process sequences, or resource limitations can hinder mitigation specificity
- Opponents and the public can complain that lack of mitigation details implies lack of commitment
- Feasibility of mitigation can be questioned when details are missing
- In an MND, reduction of impacts must be "clearly" to a less than significant level
- What is and is not allowed by CEQA?

Mitigation Principles Relative to Deferral

- Cannot defer impact assessment or recognition of significant effects
- Cannot defer adoption of mitigation until future study
- Can recognize significant effect, commit to actions, define performance criteria, and defer details, if they are not practical to define now, including design details
- Can rely on compliance with environmental regulations if there is reasonable expectation that compliance reduces the effect enough
- CEQA does not ask applicants to do detailed engineering design/operational plans before project approval

Mitigated Negative Declaration Process

- First public notice is typically when proposed MND is released for public review
- CCR § 15072: "Notice of Intent" to adopt an ND
- When MND is submitted to SCH, must include electronic form of document
- CCR § 15073, 15105(b): Review periods at least 20 days without SCH or 30 days with SCH
- CCR § 15074, 15075: Adopt the MND and file the NOD
Practice Pointer: Value of Early Consultation
- Applicant adoption of mitigation measures is required before MND release, of course
- Get responsible agencies to also "buy into" mitigation before MND release
- Especially, get agency concurrence if mitigation details are deferred
- Premise: identify and dissipate potential objections before MND release

Public Comments and Responses
- Must consider public comments on an MND
- No requirement to respond to comments
- It is important to provide responses, if substantive environmental or evidence-related points are raised
- In practice, many lead agencies respond to comments to show attentiveness to constituents

Consideration and Adoption
- To adopt, must consider MND and public comments on it.
- Public hearing at the time of adoption is discretionary under CEQA but may be required by other law or lead agency procedures
- No substantial evidence that the project will have a significant effect on the environment
- Reflects agency's independent judgment and analysis
- Specify location and custodian of the administrative record
- Adopt an MMRP for mitigation of significant effects
Mitigation Monitoring

CCR § 15097 contains detailed MMRP guidance:
- Allows delegation of monitoring to a public or private entity (but lead agency is still responsible to see it happens)
- Lead agency may monitor, report, or both at its choice
- Reporting suited to quantified measures that are already subject to review
- Monitoring is suited to measures needing regular checking

Notice of Determination

- Local lead agency files with the County clerk within 5 working days of action
- Also, file with OPR, if there are state responsible agencies (CCR § 15075[d])
- State lead agency files with OPR
- Filing begins 30-day posting and 30-day statute of limitation on litigation

Addendum to an MND

- Addendum is for minor changes or additions
- Include brief explanation why an EIR or subsequent ND is not needed, supported by substantial evidence (CCR § 15164[e])
- No public review required
- Agency considers MND and addendum together before acting
Session 5

Consultant Selection and Management
LAFCo (University
September 14, 2012

Session Strategy

- To establish practices to hire effective consultants to assist LAFCo to comply with CEQA requirements

Consultant Selection and Management

- Identify who you need and what you want them to do:
  - Request for Qualifications
  - Request for Proposals
Robert D. Klousner and Amanda Olekszulin

Request for Qualifications

- Preliminary qualifications of firms with LAFCo knowledge and experience
- Best if a qualified list is established in advance of need
- Broadly distributed
- Not many firms familiar with LAFCo

Request for Qualifications

- Required Contents:
  - Description of firm, its abilities, and similar experience
  - Description of project management staff, their expertise, and similar experience
  - Overall approach to LAFCo projects and within your jurisdiction
  - Resumes
  - References

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  - Description of firm, its abilities, and similar experience
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  - After interviews, notify firms of results
  - Be prepared to respond to questions
  - Provide meaningful feedback
Robert D. Klousner and Amanda Olekszulin

Request for Proposals

- Interview Process
  - Prepare an interview scoring worksheet
  - Use the same team to evaluate interviews
  - Notify interviewing teams of the form of the interview
  - Be explicit about formal presentation/no presentation; audio/video capabilities and expectations; dress code
  - Don't mistake polish for expertise
  - The questions to be answered in the interview include confidence in the technical expertise of the firm and whether they would be efficient, effective, and amenable

Consultant Contracting

- Explicitly define:
  - Consultant's Project Management Team
  - Scope of Work
  - Budget
  - Schedule
- Negotiation
- Non-performance
- Acknowledge shared responsibilities

Consultant Management

- You are in charge
- Get it in writing
- Monthly Progress Reports
- Sequence work products
- Review of work products
- Mutual respect
- Recognize differing motives
Session 6

Commenting on Environmental Documents

LAPCo University
September 14, 2012

Session Strategy

- Strategies for providing effective comments on CEQA documents prepared by others

Commenting on Environmental Documents

- A responsible agency function
- Start early
  - Build a relationship with subsidiary agency staff
  - Initiate outreach and staff education
  - Provide information on LAPCo issues
- Formal CEQA comments on early consultation, NOP, DEIR, follow-up
  - Limited to LAPCo issues
  - Be pleasant
Commenting on Environmental Documents

- Request for early consultation or NOP comments
  - Appropriate CEQA document
  - LAFCo's issues and the detail and quality of information needed for each issue
  - All LAFCo actions cited in project description
- Early consultation or NOP comments should take the form of a formal letter

Commenting on Environmental Documents

- Draft CEQA document comments – How did the lead agency's document handle:
  - Appropriate CEQA document
  - LAFCo's issues and the detail and quality of information needed for each issue
  - All LAFCo actions cited in project description
- Draft CEQA document comments should take the form of a formal letter

Commenting on Environmental Documents

- Other Possibilities for Comments
  - Informal consultation and meeting
  - Review of administrative draft documents
Relevant CEQA Case Law and New Requirements

Presented by
Diane G. Kindermann Henderson

September 14, 2012
CALAFCO University

Relevant CEQA Case Law and New Requirements
REGULATORY FRAMEWORK

A. Regulatory Framework

Summary

• Over 40 years old, CEQA requires lead agencies to prepare environmental documents prior to granting discretionary approvals. CEQA documents are subject to numerous court decisions applying case law and CEQA Guidelines. (Pub. Resources Code, §§ 21000 et seq; CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.)

• Substantive mandate: Public agencies should not approve projects that will significantly affect the environment if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (Pub. Resources Code, § 21002.)

• CEQA applies to all governmental agencies at all levels. (Pub. Resou § 21000(s))
Relevant CEQA Case Law and New Requirements

REGULATORY FRAMEWORK

A. Regulatory Framework, Cont.
   • LAFCO Compliance
     - LAFCO decisions that will reasonably lead to development projects that could have an effect on the environment are subject to CEQA. (Barton v. Local Agency Formation Com'ns (1978) 11 Cal.3d 283, 288.)
     - LAFCOs are typically "responsible agencies" for projects that will require annexation or other boundary changes. (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15366.6(b).)
     - Changes in LAFCO policies which will influence growth patterns or otherwise affect land use leading to potential impacts to the environment may be subject to CEQA. (City of Livermore v. Local Agency Formation Com'ns (1998) 84 Cal.App.4th 531, 538.)
     - CEQA compliance for Municipal Service Reviews (MSR) is unsettled.
     - CEQA compliance with spheres of influence (SOI) updates and amendments is also unsettled.

Relevant CEQA Case Law and New Requirements

TRENDS/ISSUES

• Baseline
  • Sufficiency of water supply analysis; what approvals are subject to SB 610?
  • Sufficiency as to the level of detail in mitigation measures; avoiding deferred mitigation claims.
  • Global warming.

Relevant CEQA Case Law and New Requirements

UPDATE

B. Update
2011 Cases - Second Time
   A lead agency's preparation of an EIR does not constitute a waiver or prohibit the lead agency from asserting that the project is exempt from CEQA.
   Many CEQA requirements for preparation of CEQA documents do not apply to the Coastal Commission when it is acting as a responsible agency and when it is acting in a manner consistent with its certified regulatory program.
   The appellate court found substantial evidence of a fair argument that the development of a Target store would have a significant environmental impact by disturbing contaminated soil, but rejected challenges based on air pollution and greenhouse gas impacts.
Relevant CEQA Case Law and New Requirements

UPDATE

B. Update, Cont.

Petitioner challenged the City of Santa Clarita’s approval of a Master Plan claiming the city failed to provide substantial evidence or analysis to support its conclusion that the Project’s impact on climate change could not be fully mitigated. The court found it was unreasonable to impose on the city an obligation to explore each and every mitigation measure in the Attorney General’s list because Petitioner did not single out any specific suggestions from the numerous potential mitigation measures in the list, and the Petitioner’s letter stated that the measures cited may not be appropriate for every project.

5. South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1684
An EIR is not necessary to analyze impacts of existing conditions on the project.

Relevant CEQA Case Law and New Requirements

UPDATE

B. Update, Cont.

CEQA requires an examination of the impacts of the project on the environment, not the other way around.

The court affirmed the ruling in Sunnyside West Neighborhood Association v. City of Sunnyside (2013) 190 Cal.App.4th 1031 that the lead agency does not have authority to select a future, postapproval date for purposes of baseline.

In Pfriem v. City of Sunnyside City Council, the Court of Appeal, Ninth Appellate District, upheld the city’s certification of an EIR and approval of an expansion of the Palo Alto Medical Foundation’s medical campus finding that the city properly assessed the project consistent with its general plan, used the current baseline for the traffic and traffic noise analyses in the EIR, and found the discussion of traffic noise impacts in the EIR to be sufficient.

Relevant CEQA Case Law and New Requirements

UPDATE

B. Update, Cont.

8. Save the Plastic Bag Coalition v. City of Manhattan Beach (2011) 52 Cal.4th 155
The Supreme Court overturned the rule that corporations must make a heightened showing to demonstrate public interest standing. The Supreme Court also urged the use of common sense at all stages in the CEQA process and held that an EIR was not required to adopt a plastic bag ordinance.

2012 Cases


The processing of sequential boundary line adjustments is categorically exempt from CEQA.
Relevant CEQA Case Law and New Requirements
UPDATE

B. Update, Cont.
   A water district has sufficient statutory interest to bring a CEQA lawsuit challenging
   assessment of impacts to groundwater basins.

   Cal.App.4th 469
   Applying the substantial evidence standard, the court upheld a challenge to the use of an
   environmental assessment (as a de facto negative declaration) for the adoption of new air
   district rules regulating manufacturer use of ozone forming volatile organic compounds.

   Cal.App.4th 1480
   The appellate court upheld the use of a variable baseline in Neighbors for Smart Rail v.
   Exposition Metro Line Construction Authority (2012) 204 Cal.App.4th 1480. The project was
   a phase 1 rail line extension, and so to traffic and air quality, the lead agency used a future
   year scenario as the baseline.

Relevant CEQA Case Law and New Requirements
UPDATE

B. Update, Cont.
   1158
   A county's mitigation fee program required the preparation of an EIR prior to its adoption
   because the evidence in the record did not support a conclusion that payment of the fee
   presumptively established full mitigation.

   Petitioners challenged the City's analysis of project impacts on agriculture arguing that the
   city failed to disclose the cumulative impacts to agriculture, and failed to support to reaction
   of a heighten mitigation level (e.g., 201) with substantial evidence. The court of appeal soundly
   rejected both contentions and upheld the City's mitigation measure.

   Cal.App.4th 1487
   Petition challenging CARB adoption of the Climate Change Scoping Plan along the scoping
   plan fails to achieve the maximum technologically feasible and cost-effective reductions in
   greenhouse gas emissions.

Relevant CEQA Case Law and New Requirements
UPDATE

B. Update, Cont.
   The court addressed three significant issues regarding EIRs: 1) A lead agency has a duty to
   respond to comments which raise significant environmental issues; 2) An EIR is not required to
   contain an economic feasibility analysis, and 3) It is acceptable practice for lead agencies to
   structure statements of overlying considerations in the alternative (as compared to drafting them
   in the cumulative).

    A county’s approval of a negative declaration for an oak woodland project related impact fee
    was overturned where the program EIR did not adequately study the potential impacts.

    A local board of supervisors does not have appellate review rights of a landfill permit granted by
    a local enforcement agency.

ABOTT & KINDERMANN, LLP
B. Update, Cont.

12. Tomlinson v. County of Alameda (2012) 54 Cal.4th 281
   A county was entitled to assert Public Resources Code section 21177 as defense to a CEQA claim that an exemption was improperly applied.

   Follow-up actions by a school district in leasing out surplus property did not constitute a new project and therefore did not trigger a new CEQA claim.

   Administrative Record Issues

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B. Update, Cont.

   It is not uncommon in CEQA cases for the opponents and the lead agency to extend the statute of limitations through a tolling agreement.

   Attorney’s fees case

17. Robinson v. City & County of San Francisco (July 26, 2013, No. A132385)
   ___ Cal.App.4th __________
   CEQA exemptions

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Relevant CEQA Case Law and New Requirements

SB 317 – CEQA REFORM BILL

BACKGROUND - SB 317

SB 317 would have added the Sustainable Environmental Protection Act to CEQA (Public Resources Code section 21002 et seq.) which would have modified the environmental review process most prominently as follows:

1. The requirement’s analytical methods, and mitigation and minimization approaches found in a listed environmental law would be the exclusive means to evaluate and mitigate the environmental effects that are the subject of that environmental law.

2. Remove the requirement to make findings required by Public Resources Code section 21081 regarding significant effects for aesthetic impacts, except for those found along an official state scenic highway.

3. Remove petitioners’ right to sue for non-compliance with CEQA if based upon any set of listed environmental topics areas, or regulatory or permit approval procedures required or authorized by an applicable environmental law, and
Relevant CEQA Case Law and New Requirements

SB 317 – CEQA REFORM BILL

STATUS: Open

(6) Remove petitioners’ right to sue for non-compliance with CEQA if the project was approved in
conformity with a use, density, or intensity of an applicable land use or similar plan and mitigation
measures from the certified environmental document for that existing plan are incorporated into the
new project’s environmental document.

The bill was pulled before the end of the legislative session, so for now this issue is dead. However, given
the way CEQA has become more and more commonly used by some petitioners to push an agenda that
has little or nothing to do with protecting the environment, a CEQA reform bill in some form is highly likely
to come back in 2013. Whether it will be successful is anyone’s guess at this point.