CEQA FUNDAMENTALS
for LAFCo’s

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Opening Comments
James Moose

- Goal of course: achieve a general familiarity with CEQA principles with special attention as to how they apply to LAFCos
Opening Comments
Stephen L. Jenkins

- CEQA is an ART - not a Science
- CEQA is ONE tool in the decision process
- Does your Commission want you to be a LEADER or a FOLLOWER?
- Lead Agency AND Responsible Agency roles are BOTH a Double-edged Sword.
- Always beware of UNKNOWN Plaintiffs
What is “CEQA”?

– State law enacted in 1970

– State law analog to the National Environmental Policy Act (“NEPA”)

– Located in the California Public Resources Code (section 21000 et seq.)
The CEQA Guidelines: Roadmap for Compliance

1. Legal effect of the Guidelines

2. CEQA Guidelines “updates”

3. Implementing procedures of individual agencies (each LAFCo should adopt them)
Purposes of CEQA

1. Information
2. Disclosure/Participation
3. Mitigation
4. Accountability
Procedure – Analyze impacts in a public setting with input from other agencies and citizens

Substance – Mitigate impacts to the extent feasible
Who conducts environmental review?

-- Agency planning staff

-- Environmental consulting firms

-- Agency staff and consultants
Determination of Agency Roles

1. “Lead” agency
2. “Responsible” agency
3. “Trustee” agency
The **lead agency** is the one with the “principal responsibility for carrying out or approving a project.”

The lead agency will decide how to proceed under CEQA and have ultimate responsibility for the process.

OPR decides the Lead Agency if there is a dispute per Section 15053 CEQA Guidelines
LAFCo is the Lead Agency for:

- Incorporations and Disincorporations
  (see OPR Guide Oct 2003)
- Municipal Service Reviews
  (see OPR Guide Aug 2003)
- Sphere of Influence
  (see OPR General Plan Guidelines 2003 P. 187)
- Sphere of Influence AND Annexation???
  (this is a grey area)
A responsible agency has some permit authority or other approval power over some aspect of the proposed project.

A responsible agency relies on the lead agency’s environmental document in its decision-making, provides comments to the lead agency in the CEQA process, and ultimately makes its own required findings regarding the analyzed impacts.
LAFCo is the Responsible Agency For:

- Annexations (with prezoning)
  (CEQA Guidelines 15051 (b) (2))
- Annexation AND Sphere of Influence???
  (this is a grey area)
Responsibilities of Responsible Agencies:

- Lead Agency **shall** consult with Responsible Agencies **before** preparing document –
  (CEQA Section 21080.3)

- Responsible Agency **shall** specify to Lead Agency the scope and content of environmental information that it needs
  (CEQA Section 21080.4 (a))
Responsibilities of Responsible Agencies (continued):

- The information specified by the Responsible Agency shall be included in the EIR
  
  (CEQA Section 21080.4 (a))

- During public review, Responsible Agency may identify significant impacts and propose mitigation measures
  
  (CEQA Guidelines Section 15204 (f))
A trustee agency is an “agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California.”
Three-step CEQA process for reviewing a proposal:

1. Is it a “Project” subject to CEQA?

2. What are its potential impacts? (Initial Study)

3. Prepare a negative declaration or an EIR?
What is a “Project”? 

“Project” is defined as activity approved by a public agency that may cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.
Discretionary:

CEQA review is required for any “discretionary project[] proposed to be carried out or approved by public agencies, including” a large and open-ended list of activities, such as development permits, general plan adoption and amendments, and zoning activities.
A project may be:

- An activity **carried out** by a public agency (such as a general plan, policy, or regulation)

- An activity **funded** by a public agency; or

- An activity **approved** by a public agency (such as a housing subdivision or a conditional use permit)
What is an “approval”?

- Approval means a commitment to a definite course of action
- Environmental review should be conducted as early as feasible in the planning process
  -- early enough to influence design yet late enough to provide meaningful information
Is the project “exempt”? 

Certain types of projects are statutorily or categorically exempt from CEQA.
Statutory exemptions

- Created by statute, not regulation;
- Generally apply regardless of the level of environmental impact;
- Major examples are:
  - ministerial actions
  - actions necessary to prevent or mitigate an emergency
  - closing of public school or the transfer of students to another school if resulting physical changes would be categorically exempt
Categorical Exemptions

- Created by regulation by Resources Agency pursuant to statutory authority;

- Apply to “classes” of discretionary agency actions supposed generally not to result in significant environmental effects

- Subject to “exceptions” that can defeat the exemption
Exceptions to Categorical Exemptions:

Project will be carried out 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

Project may cause substantial adverse change to an 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.”

(CEQA Guidelines, section 15061(b)(3).)

Use of this Exemption requires supporting evidence.
Procedural Devices:

1. Initial Study
2. Negative Declaration
3. Environmental Impact Report (‘‘EIR’’)
Initial Study

If the proposed activity is

-- a project, subject to
-- discretionary approval and
-- is not exempt

then

the agency must perform an “initial study” to determine whether the project could have a significant effect on the environment.

The lead agency must consult with all responsible and trustee agencies affected by the project.
If the initial study reveals no substantial evidence supporting a fair argument that significant impacts may occur, then the agency can prepare a “negative declaration” instead of a full-blown EIR.
• Agencies may adopt “thresholds of significance” as criteria for determining whether a given impact is “significant”

• Certain circumstances prompt “mandatory findings of significance” requiring preparation of an EIR

• Some projects automatically require an EIR (such as military base reuse plans or initial issuance of a hazardous waste facilities permit)
Environmental Justice Issues

- This is a NEPA Requirement created by Executive Order (Bill Clinton)
- This is NOT a CEQA requirement
- State has adopted policy suggesting that “State” Agencies address this topic
- See OPR Guide for Incorporation
- See OPR Guide for Municipal Service Reviews.
A negative declaration involves:

1. Public notice of availability

2. Public review period: 20-30 days

3. Consideration and approval of the negative declaration

4. Decision on the project

5. File Notice of Determination with Office of Planning and Research and County Clerk (triggers statute of limitations)
If the initial study reveals that significant impacts might occur, then the agency must prepare either a **mitigated negative declaration** or an **EIR**.

If the project proponent agrees to **modify the project** to reduce or eliminate any significant or potential significant impacts, the agency can proceed with a “mitigated negative declaration”.

The mitigated negative declaration must be circulated for **public comment** just like a negative declaration.

Otherwise, the agency must proceed with an EIR.
Environmental Impact Report

Notice of Preparation (NOP):

When an EIR is required, the lead agency must prepare a notice of preparation which is distributed to all responsible and trustee agencies.

Scoping:

After issuance of the NOP, the lead, responsible, and trustee agencies will consult to:

- discuss the proper scope of the EIR
- to provide assistance in identifying potential impacts and mitigation options

The lead agency is not required to involve the public in this process, but often does.

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Project, Program and Master EIRS

Project EIR: typical, single purpose EIR prepared to analyze a specific proposal

Program EIR: analyzes the environmental consequences of broad policies or programs at the planning stage; more detailed analysis is prepared in subsequent documents

Master EIR: similar to “program” EIR; used to analyze the impacts expected to result from a broadly defined planning or policy program; “focused” EIRs are prepared to provide more detailed analysis of specific projects that follow
A Draft EIR is prepared by the lead agency or by a consultant under contract with the lead agency.

Treatment of environmental impacts: The EIR must focus on the possible significant environmental impacts of a proposed project; including cumulative impacts.
Treatment of environmental impacts:

An EIR focuses on the project’s possible significant environmental impacts, including cumulative impacts.
For any significant impact, the agency must require feasible mitigation measures, or feasible environmentally superior alternatives to the project as proposed
In devising mitigation measures, an agency may exercise only its EXPRESS or IMPLIED powers provided by law other than CEQA.
Deferred Mitigation:

Speculative mitigation measures fail to satisfy CEQA’s requirements

Deferral of mitigation may be permissible to the extent that the agency commits to a realistic “performance standard”
Consultation with Responsible and Trustee Agencies

The lead agency must submit the Draft EIR to all responsible and trustee agencies for comment.

Failure to comply with these requirements can invalidate the document.
When the Draft EIR is complete, the lead agency must file a “Notice of Completion” with the Governor’s Office of Planning and Research. At the same time as it sends the Notice of Completion, the lead agency is required to provide public notice of the availability of the Draft EIR for public review and comment.
The public notice is required to be:

- mailed to anyone who has previously requested notice in writing
- to be published in a newspaper of general circulation in the area affected, posted on and off the site in the area affected, and
- provided by direct mail to owners and occupants of contiguous properties.
Public Review and comment period:

The lead agency must allow public review and comments for a period of at least 30 and no more than 60 days.

If the lead agency or a responsible agency is a state agency, the minimum public review and comment period is generally 45 days.

The lead agency must also make copies of the Draft EIR available for public review in its office and in all public libraries in the area affected.
Recirculation

Significant project changes or “significant new information” regarding the project, the environmental setting, or the impacts may trigger the requirement to recirculate the draft EIR for additional public review and comment.
Preparation of the Final EIR:

After the close of the public review and comment period on the Draft EIR, the lead agency must prepare a Final EIR.

The Final EIR consists of:

-- the Draft EIR or a revision of the Draft EIR;

-- a summary or verbatim reproduction of the comments received;

-- a list of commenters; and

-- the agency’s responses to significant environmental points raised
Responses to comments:

The lead agency must consider public comments on significant environmental issues and provide a “good faith reasoned analysis in response.”
Consideration of the Final EIR

Lead agency’s decision-making body must “independently review and analyze” the Final EIR

The lead agency’s certification must be made on the basis that the document is legally adequate and “reflects the independent judgment” of the agency
Mitigation monitoring program:

The agency must adopt a “reporting or monitoring program” designed to ensure that mitigation measures are implemented.

The mitigation measures must be “fully enforceable” through permit conditions, agreements, or other measures.
“CEQA Findings”

- Must be made for each significant effect identified in the EIR

- Findings must state that the impact is either:

  1. Mitigated by project conditions or adoption of an alternative;

  2. Subject to the jurisdiction of an agency other than the lead agency; or

  3. Infeasible to mitigate
Statements of overriding considerations:

If the lead agency determines that it is infeasible to mitigate a significant environmental impact, the agency must adopt a “statement of overriding considerations.”

The statement of overriding considerations, as all the required findings, must be supported by substantial evidence in the record.
Notice of determination:

Upon approval of the project, the agency must file a notice of determination (“NOD”).

If the lead agency is a state agency, the NOD is filed with the Governor’s Office of Planning and Research.

If the lead agency is a local agency, it must file the NOD within 5 working days with the county clerk.

All members of the public who have requested a notice must also receive a copy of the NOD.
Proper filing and posting of the NOD triggers a 30-day statute of limitations.

Failure to file or post an NOD triggers a 180-day statute of limitations.
SUBSEQUENT AND SUPPLEMENTAL EIRS

-- Post-certification of Final EIR

-- New information or “substantial changes” to the project or the circumstances surrounding it

(Pub. Resources Code section 21166)
Master Environmental Assessments

“MEAs” catalog information that may be repeatedly useful for preparing CEQA documents

Typically include physical and biological data that will be repeatedly relevant for future projects
Special Situations

- Redevelopment Projects
- Residential
- State Prisons
- Military Base Reuse Plans
- Environmentally-mandated Projects
- Reformulated Gasoline
- Certain Caltrans Projects
State regulatory programs may be “certified” by the Secretary of the Resources Agency.

Must meet specified criteria to be allowed to follow a simplified environmental review process.

Environmental review documents prepared by these agencies are called “functional equivalents” of EIRs.
Appendix A to CEQA Guidelines
Questions and Answers