

LAFCO AND CEQA

THE WHO, WHAT, WHEN,
WHERE AND WHY

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So Many Questions

- Who's taking the Lead?
- What moves can a Responsible Agency make?
- When is too early, when is too late?
- Where are my Exemptions?
- Why is/isn't this a Project?

Who's taking the Lead?

- The Lead Agency Concept
- If the project will be carried out by a public agency, that agency shall be the lead agency – Guidelines 15051(a)
- If the project is private, the lead agency shall be the agency with the greatest responsibility – Guidelines 15051(b)

Who's taking the Lead?

- Normally, the agency with more general powers
 - A pre-zoning city is the lead to an annexation by LAFCO - Government Code § 56375(a)(3); *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169
 - All things being equal, the agency that acts first takes the Lead - *Bozung v. LAFCO of Ventura County*, 13 Cal.3d 263, 285-287 (1975) [LAFCO was the lead agency on annexation prior to concept of responsible agency]

Who's taking the Lead?

- Disputes are settled by agreement, sometimes
 - Use of Office of Planning and Research - Guidelines §15053
 - City v. City battling annexation proposals - Government Code § 56651[application accepted and certificate of filing issued]
 - LAFCO has discretion to determine priority of pending conflicting proceedings - Government Code § 56655

Who's taking the Lead?

- As a general rule the Responsible Agency must use the environmental document prepared by the Lead agency
- The Responsible Agency takes over the Lead if:
 - Lead Agency fails to prepare any environmental documents for a Project and the statute of limitations has expired;
 - Lead Agency prepared environmental documents for a Project but a subsequent EIR is required and final Project approval has been given and the statute of limitations expired; or
 - Lead Agency fails to consult with the Responsible Agency and the statute of limitations has expired to challenge the action - Guidelines § 15052

What moves can a Responsible Agency make?

- Consultation and Review

- Public participation is an essential part to the CEQA process – *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1123
- The Lead agency is required to consult with and request comments from Responsible Agencies
- Responsible Agency comments on area of expertise should be substantive and supported
- Responsible Agency needs to provide mitigation information addressing significant effects – Public Resources Code (PRC) § 21081.6; Guidelines §§ 15086, 15096

What moves can a Responsible Agency make?

- Recirculation required if significant new information provided – *Western Placer v. County of Placer* (3rd App. Dist. November 9, 2006) Case No. C049364 [agency not required to revise FEIR until it determines that new information is significant.]

What moves can a Responsible Agency make?

- Lawsuit or acceptance
 - 30 days (NOD), 35 days (NOE), 180 days – PRC § 21167
 - Missed deadline equals CEQA compliance - PRC § 21167.2; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169
 - Exhaustion of remedies – PRC § 21177
- Shift the Lead

What moves can a Responsible Agency make?

- Subsequent review

- Subsequent EIR: substantial changes to project or circumstances requiring major revisions to previous environmental document or new information of substantial importance - Guidelines § 15162
- Supplemental EIR: substantial changes to project or circumstances requiring minor revisions to previous environmental document or new information of substantial importance- Guidelines § 15163
- Addendum: only technical changes required to environmental document - Guidelines § 15164

What moves can a Responsible Agency make?

- Mitigation

- Consider the environmental document provided
- Adopt alternatives or mitigate significant effects for those parts of the project approved
- No approval (DENIAL) where feasible mitigation may lessen or avoid significant effects - Guidelines § 15096

What moves can a Responsible Agency make?

- Findings
 - Establish that all significant effects are substantially lessened or eliminated;
or
 - Establish that significant effects are unavoidable but acceptable do to overriding concerns – Guidelines §§ 15091 - 15093

When is too early, when is too late?

- As early as feasible to enable environmental considerations to influence the project program and design but late enough to provide meaningful review – Guidelines § 15004(b)
- Approval is required that commits the agency to a definite course of action in regard to a project- Guidelines § 15352

When is too early, when is too late?

- Sphere of Influence Amendment
 - Stand-alone – *City of Agoura Hills v. LAFCO* (1988) 198 Cal.App.3d 480 [partial adoption of SOI not a project where it was not a necessary step in development]
 - Foreseeable development

Where are my exemptions?

- Common Sense

- Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment – Guidelines § 15378(B)(5)
- Community Facilities District established to raise funds for future schools not a project – *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified Sch. Dist.* (1992) 9 Cal.App.4th 464, 476

Where are my exemptions?

- Annexation of Existing Facilities – Class 19
 - Exempt if facilities developed to existing zoning and no change in zoning
 - Not exempt if new services would provide greater capacity – *City of Santa Clara v. LAFCO* (1983) 139 Cal.App.3d 923 [annexation not exempt because utility services expanded available capacity and because of inconsistency between prezone and general plan uses.]
 - City prezone and annexation that satisfies exemption – *Bozung* [annexation Project], PRC § 21080(a) [zoning Project], Government Code § 56375(a)(3) [prezone required]

Where are my exemptions?

- Government reorganizations – Class 20
 - Exempt if there is no change the area in which previously existing powers were exercised - Guidelines § 15320

Why is/isn't this a Project?

- City purchase of open space storing drums of solvents
- City purchase of open space with sensitive wildlife corridor
- Sanitary District condemnation of property for an odor buffer zone
- A bus fair increase
- Modification of interior of private historic residence
- The proposed addition of PEX plastic pipe to the state building codes