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)
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