

**SAN BERNARDINO
LOCAL AGENCY FORMATION COMMISSION
ENVIRONMENTAL REVIEW GUIDELINES:
ADMINISTRATIVE POLICIES AND PROCEDURES**

I. INTRODUCTION

On June 20, 1990, the San Bernardino County Local Agency Formation Commission (LAFCO) adopted, by Resolution #2267, the California Environmental Quality Act's (CEQA) State Guidelines and any amendments, as its environmental guidelines. This document outlines the specific procedures used by LAFCO to tailor the general provisions of the State Guidelines to LAFCO's specific functions as both a "Responsible" and a "Lead" agency.

These provisions and procedures incorporate by reference (and are to be utilized with) the State Guidelines, a copy of which is on file with the LAFCO Clerk. These procedures will be revised as necessary to conform to amendments to the State Guidelines, within 120 days after the effective date of such amendments. However, LAFCO will implement any such statutory changes as soon as they become effective. On January 18, 1995, the Commission amended, by Resolution #2469, its adopted Environmental Review Guidelines, and Administrative Policies and Procedures. These changes have been incorporated into this document. (A copy of LAFCO Resolution #2469 outlining the specific changes is on file in the LAFCO office.)

LAFCO's goals and mandates to protect the physical and human environment within its jurisdiction also encompass a responsibility to minimize delay and paperwork.

A. LAFCO's Environmental Responsibilities

LAFCO's role as a regulatory agency involves "the discouragement of urban sprawl and the encouragement of the orderly formation and development of local agencies." A few of its duties require minimal environmental review, especially those involving the commissioning of studies, the hearing of protests, and consolidations, reorganizations and mergers of cities or districts. Most of these duties only constitute jurisdictional changes with no potential for land use changes or for significant effects on the physical environment.

Its more prominent roles including, but not limited to, creation of spheres of influence, formation of new districts, incorporation of new cities, and annexations to cities or special districts require more in-depth analysis, especially if they

result in the direct or indirect facilitation of growth and/or land-use alterations. Factors that must be assessed in these cases involve land area and use, all aspects of the physical and human environment, geographical features, population growth and density, social and economic changes, availability of infrastructure and government services, conformity with city or county land use plans, creation of unincorporated "islands," etc.

II. ENVIRONMENTAL PROCESS AND PROCEDURES

A. LAFCO's Role as an "Interested" Agency

The Executive Officer will review, and, if necessary, comment on all environmental documents submitted by a Lead Agency involving projects/decisions relating to and/or affecting LAFCO projects or policies.

B. LAFCO's Role as a Responsible Agency

"Responsible" Agency status occurs when LAFCO is not the "Lead" Agency, but nevertheless has discretionary approval authority over a project, in tandem with, or separate from that of the Lead Agency.

Examples of lead agencies involving LAFCO as a Responsible Agency include but are not limited to:

A city approving an annexation request to LAFCO, only after pre-zoning the area in question. When a city has pre-zoned an area, the city will be the Lead Agency for any subsequent annexation of the area and should prepare the environmental documents at the time of pre-zoning or other land use approval.

When a special district has conducted an environmental review and prepared an environmental determination for a plan to serve an area to be annexed to the district.

LAFCO shall use the environmental document prepared by the Lead Agency for LAFCO's environmental determinations if the Executive Officer deems it adequate for such use. Procedures for determining adequacy are summarized as follows:

1. Consultation

- a. Each Lead Agency carrying out a project affecting LAFCO's jurisdiction and function shall inform LAFCO in writing of its

intent and schedule at the beginning of its CEQA review process, including but not limited to copies of applications.

- b. The Lead Agency shall consult with LAFCO regarding preparation of its environmental documents (Initial Studies, Categorical Exemptions, Statutory Exemptions, Negative Declarations, EIRs, etc.) which must also be used by LAFCO in its role as a Responsible Agency; consultation can be written or verbal and LAFCO's input shall be incorporated in the Lead Agency's determinations and analysis.
- c. The Executive Officer shall, as soon as practical but within 30 days of such notification, comment as to the appropriate environmental determination from LAFCO's perspective. The requirement for written notification from the Lead Agency can be waived at the Executive Officer's discretion.
- d. Where LAFCO disagrees with the Lead Agency's proposed environmental determination (such as a Negative Declaration), LAFCO will identify the specific environmental effects which it believes could result from the project and recommend the project be mitigated with "conditions of approval" to reduce the potential impacts to less than "significant" or that an EIR be prepared.
- e. When it intends to prepare an EIR, the Lead Agency shall send a Notice of Preparation by certified mail to LAFCO to solicit input.
- f. LAFCO shall respond to this notice in writing within 30 days, specifying the scope and content of the environmental data and analysis germane to LAFCO's statutory responsibilities for the proposed project.

2. Preparation of Environmental Documents by a Lead Agency

- a. The Lead Agency shall include information in the Initial Study/Negative Declaration/EIR to allow its subsequent use by LAFCO for its considerations; referencing on the title page and in the project description any boundary changes or other such actions requiring discretionary action by LAFCO to fully implement the project.

- b. The Lead Agency shall send the draft document to LAFCO as part of the public review process required by the CEQA and applicable guidelines. The Executive Officer will, within the allotted period, send comments to the Lead Agency in writing, all of which should be incorporated and assessed in the final document. These comments should focus on the appropriateness of a Negative Declaration, adequacy of the EIR, additional alternatives or mitigation measures, etc., but must be confined to project aspects or environmental effects germane to LAFCO's subsequent discretionary action.

3. Filing with LAFCO

- a. Applications filed by Lead Agencies with LAFCO shall include copies of one of the following environmental documents as specified in LAFCO's filing requirements and all applicable findings per Sections 15091 and 15093 of the State Guidelines.
 - Certification of Categorical Exemption;
 - Certification of Statutory Exemption;
 - Notice of Availability of a Proposed Negative Declaration;
 - Final Negative Declaration (including copy of Initial Study);
 - Final Negative Declaration with mitigation measures (including copy of Initial Study and Mitigation Monitoring/Reporting Plan);
 - Notice of Subsequent Use of an Existing EIR (which was previously available to LAFCO);
 - Final EIR; and/or
 - Statements of Findings/Overriding Considerations, and Mitigation Monitoring Plan; and
 - Notice of Determination and Certificate of Fee Exemption (De Minimis Impact Finding).
- b. The Executive Officer may deem an application incomplete, unless accompanied by the required CEQA documents. The Executive

Officer shall review these documents to assure their adequacy for use by LAFCO for its determination as the Responsible Agency.

4. LAFCO's Use of Lead Agency's Environmental Documents

- a. In making its determinations on boundary change proposals, LAFCO will use the environmental document prepared by the Lead Agency if the procedures outlined above have been followed.
- b. Prior to project approval, the Commission will certify that it has reviewed and considered the information contained in the Lead Agency's document. LAFCO may request the Lead Agency furnish additional information or findings as required to support a legally adequate environmental determination.
- c. When a Lead Agency's EIR identifies significant environmental effects, LAFCO will incorporate the Lead Agency's findings or formulate its own, for each significant effect, per Section 15091.
- d. LAFCO may take any of the following actions to conform to CEQA requirements when rendering a decision on an application:
 - LAFCO shall not approve a proposed project with significant impacts if it can adopt feasible alternatives or mitigation measures within its powers that would substantially lessen the magnitude of such effects, unless it adopts a Statement of Overriding Considerations;
 - If LAFCO mitigates impacts listed in the EIR to a level below the "significant threshold" via the adoption of boundary alternatives or conditions of approval (negotiated with the local agency), such findings shall be reinforced by adequate rationale and inserted in the record; or
 - If the LAFCO decision does not include mitigation of significant impacts listed in the EIR below the "threshold of significance," LAFCO shall adopt the Lead Agency's Statement of Overriding Considerations or formulate its own, per Section 15093.
- e. Upon project approval, LAFCO shall file a Notice of Determination in a like manner as a Lead Agency. The Notice of Determination shall be filed with the County Clerk of the Board of Supervisors.

III. LAFCO'S ROLE AS A LEAD AGENCY

A. General Information

LAFCO will be the Lead Agency responsible for performing CEQA mandated environmental review when its discretion for approval or denying a project involves general governmental powers. This is in contrast with a Responsible Agency role which only has single, limited powers over the project, normally subsequent and secondary to LAFCO's function.

Examples of projects requiring LAFCO to act as a Lead Agency include but are not limited to the following:

- Formation and boundary changes of cities and special districts: (Annexations, detachments, incorporations, disincorporations, dissolutions, and reorganizations).
- Establishment of spheres of influence for cities and special districts.
- Studies of local government agencies.

An example of another entity acting as a Responsible Agency when LAFCO is Lead Agency:

The "conducting authority" (legislative body of the local agency affected by LAFCO's action). The extent of the conducting authority's discretion determines the scope of its environmental responsibilities. Under normal situations, these 'authorities' only review and ratify LAFCO's primary actions, usually not requiring extensive CEQA review. However, the duties of a legislative body responding to a major protest of a LAFCO action might warrant more substantial environmental review.

Where another public agency is initially the appropriate Lead Agency for a project requiring subsequent LAFCO approval, LAFCO will assume the role of Lead Agency in those instances where:

1. The Lead Agency failed to prepare an environmental document and the statute of limitations to a challenge of the action of the Lead Agency has expired.
2. An inadequate environmental document was prepared without consultation with LAFCO per State Guideline procedures and the statute of limitations for a challenge has expired.

3. A subsequent EIR is required pursuant to Section 15153 of the State Guidelines and the original Lead Agency chooses not to prepare a subsequent EIR.

LAFCO shall assume Lead Agency responsibility under situations (1) and (2) only when it has been unsuccessful in effecting necessary changes in environmental documentation by the Lead Agency through the normal administrative process.

B. Delegation of Responsibilities by the Commission to the Executive Officer

The following quotations from Section 15025 of the State Guidelines indicate those functions that can and cannot be delegated to the Executive Officer by the Commission:

A public agency (the Commission) MAY assign specific functions to its staff (Executive Officer) to assist in administering CEQA. Functions which may be delegated include but are not limited to:

1. Determining whether a project is exempt.
2. Conducting an Initial Study and deciding whether to prepare a draft EIR or Negative Declaration (refer to Section IV, F. 2. of these guidelines for a discussion of the appeal process when an EIR is required.)
3. Preparing a Negative Declaration or EIR.
4. Determining that a Negative Declaration has been completed within a period of 105 days (see Section 21100.2 of CEQA).
5. Preparing responses to comments on environmental documents.
6. Filing notices.

The decision-making body of a public agency (the Commission) shall NOT delegate the following functions:

7. Review and consideration of a final EIR or approval of a Negative Declaration prior to making a decision on a project before the Commission.
8. The making of findings as required by Sections 15091 and 15093.

IV. LAFCO'S LEAD AGENCY PROCEDURES

The following process and procedures, specific to LAFCO's function, summarize or supplement the State CEQA Guidelines and are to be used to process all accepted applications:

A. Application Acceptance (Section 15101)

LAFCO will accept or reject a project application, based on its completeness, within 30 days of its filing.

B. Projects Exempt from CEQA

1. Statutory Exemptions (Section 15260)

Projects qualifying for this status are those determined by the Executive Officer to have no possibility of causing a physical change in the environment or of creating a significant adverse environmental effect. Although this "finding" is available for use by the Executive Officer, most such projects will fall within the following Ministerial or Exemption categories. Such findings will be included in the hearing record and cited accordingly.

2. Ministerial Projects (Section 15268)

Actions or Ministerial Projects involve the application of fixed standards without the option of exercising personal or subjective judgment by the Executive Officer or the Commission.

Examples include:

- a. Issuance of Certificates of Filing and Completion.
- b. Consolidation of special districts where the consolidation is approved by both district boards by resolution.
- c. Certain island annexations (under Section 56375 [a]) where approval is mandated if the annexation meets certain discretionary findings.

3. Categorical Exemptions (Section 15300)

The following classes of projects, specifically pertaining to LAFCO's activities, have been identified in the State Guidelines as not having the poten-

tial for significant environmental effects, and are categorically exempt from the requirements of CEQA (Note: A categorical exemption shall not be used for these activities where there is a reasonable possibility that the activity will have a significant effect due to unusual and/or cumulative circumstances.):

a. Class 3: Construction or Conversion of New, Small Structures

Included within this category are out-of-agency service agreements involving the extension of water, sewer, or utility service by a city or district outside its boundaries but lying within its respective sphere of influence.

b. Class 19: Annexations of Existing Facilities and Lots for Exempt Facilities

Including within this category are:

- 1) Annexations to special districts where the district's services would be provided even without annexation and construction has been initiated prior to the issuance of a Certificate of Filing;
- 2) Annexations of areas containing existing public or private structures developed to the density allowed by current zoning or pre-zoning, whichever is more restrictive, (provided, however, that the extension of utility services within the annexed area would have a capacity to serve only those existing facilities);
- 3) Detachments from cities where the land being detached is committed, by virtue of an adopted land-use plan, to remain in agricultural use or open space; or where the land is presently developed and no change in land-use can be reasonably anticipated; and
- 4) Detachments from special districts which will not result in any change in zoning or land use.

c. Class 20: Changes in Organization of Local Agencies

Included within this category are changes in the organization or the reorganization of local agencies where the changes do not modify

the geographic area in which previously existing powers are exercised. Examples include but are not limited to:

- 1) Establishment of a subsidiary district;
- 2) Consolidation of two or more districts having identical boundaries;
- 3) Merger with a city of a district lying entirely within the boundaries of the city; or
- 4) Reorganization of agencies consisting of annexations or detachments providing similar services.

4. Process

When a LAFCO project qualifies for an exemption, staff will file a LAFCO "Notice of Exemption" form, to include:

- a. A brief project description;
- b. The specific exemption (statutory/categorical); and
- c. The rationale for its selection, citing the State Guideline section.

5. Notice Requirements

The Notice should accompany the project application through the process and be filed upon project approval with the Clerk of the County Board of Supervisors. Copies shall be made available to the public and sent to all Responsible and affected agencies a minimum of 21 days prior to a LAFCO action on the project. A list of such notices shall be posted on a weekly basis in the Clerk's and/or LAFCO offices for a 30-day period. The filing and posting start a 35-day statute of limitations period on legal challenges to LAFCO's decision of 'exemption.' If a Notice is not filed, a 180-day statute of limitations will apply.

C. Initial Studies

A project for which LAFCO is the Lead Agency and which is not exempt will require the preparation of an Initial Study to determine if the project has the potential for causing a significant environmental effect. The Initial Study assessment shall consider all phases of the project; the purposes, policies, rules, regulations and standards set forth in CEQA and its State Guidelines; these

procedures and the adopted plans and policies of cities, the County, and LAFCO. An Initial Study need not be prepared if the Executive Officer determines at the beginning stages of review that a full-scope EIR will be required, but will be used to document the significance of specific impacts requiring a focused EIR.

1. Process

The Initial Study will be prepared on a LAFCO form using the project application, environmental description forms, appropriate literature, etc. A site visit may be necessary. Individual findings for environmental issues will be documented with sufficient technical data to support conclusions regarding the potential for significant adverse impact. Insufficiency of available information will be noted on the form if it affects the ability to reach a conclusion.

The preparer shall consult with all Responsible Agencies and other public agencies/persons/organizations affected by or knowledgeable of the project and its issues. Under appropriate circumstances such review could also involve use of the County's or a city's Environmental Review Committee and its public forum to more fully assess the physical, social and infrastructural implications of complex projects. The Initial Study will be the supporting document for findings of 'significance' and 'non-significance' (whether to prepare an EIR or Negative Declaration). It is a tool for modifying projects and/or stipulating mitigation measures to allow a finding of 'non-significance.' It can also be used to focus the EIR on effects determined to be 'significant' or to determine whether a previously prepared EIR could be used/modified for the project, etc.

The Initial Study shall contain:

- a. A project description and location;
- b. Environmental setting;
- c. Identification of all environmental impacts; and
- d. Examination of project consistency with zoning and land-use plans, etc.

Section 15063 of the State CEQA Guidelines contains a detailed description of the content of and uses for the Initial Study and it is hereby incorporated by reference.

D. Executive Officer's Determinations/Findings

After review of the Initial Study and all supporting information, the Executive Officer shall determine the appropriate environmental documentation based on one of the following findings:

1. The project is exempt (statutory or categorical exemption), assuming this was not determined prior to the preparation of an Initial Study. Recommend adoption of a Notice of Exemption.
2. The project will not have a significant environmental effect. Prepare a Negative Declaration and a Notice of Determination. Forward these to the Commission with a recommendation for adoption and publish a notice of intent to adopt a Negative Declaration.
3. The project, as proposed, would have a significant environmental effect, but with alterations, stipulations, or mitigation measures, all adverse impacts can be mitigated to a threshold less than 'significant.' Prepare a Negative Declaration with mitigation measures and a Notice of Determination. Forward these to the Commission with a recommendation for adoption and publish a notice of intent to adopt a Negative Declaration.
4. The project will have a significant environmental effect, but all such impacts have been adequately assessed in a final EIR previously reviewed by LAFCO and mitigated to the extent possible. Submit to the Commission with appropriate findings.
5. The project will have a significant environmental effect. An EIR will be prepared and submitted to the Commission with appropriate findings.
6. The project will have a significant environmental effect and an EIR has been prepared. However, new information or changed conditions affecting the project or the site warrant additional analysis. Prepare a 'subsequent' EIR or addendum to the original EIR focusing on these changes. Submit to the Commission with appropriate findings.

E. Negative Declaration

A Negative Declaration (finding of non-significant effect) or a Negative Declaration (finding of non-significant effect with project changes/mitigation measures/conditions of approval) will be prepared on a LAFCO form by staff per the findings of the Initial Study. Its contents will include a brief project description, location (i.e., vicinity map), name of applicant, the 'finding of non-significance,' attached Initial Study, and a list of mitigation measures (if any). A determination of the Initial Study's adequacy and the preparation of the accompanying Negative Declaration initially rests with the Executive Officer. The formal adoption of the Negative Declaration rests ultimately with the Commission.

1. Notice Requirements

The document will be available at the LAFCO office for public review and comment for a minimum of 21 days prior to LAFCO action on the project. Recommended Negative Declarations (in the form of a notice of intent to adopt a Negative Declaration) will be noticed at least once in a newspaper of general circulation (The Sun); noticed in the "local" newspaper of the affected area (if any); mailed to all Responsible Agencies and public agencies with jurisdiction within the project area; mailed to those individuals and organizations who have requested such notices. Where one or more state agencies will be a Responsible or Trustee Agency or will exercise jurisdiction over natural resources affected by the project, LAFCO shall send copies of the Negative Declaration to the State Clearinghouse for distribution to these state agencies. Review by state agency(s) will require a 30-day period unless reduced by prior approval of the State Clearinghouse.

2. LAFCO Consideration

The Commission will consider the proposed Negative Declaration and any public and agency comments prior to approving a project, and will approve the Negative Declaration if it finds there is no substantial evidence that the project will have a 'significant environmental effect.' Where mitigation is included as a condition of the Negative Declaration, the annexing agency (city or district) will assume responsibility for the preparation and adoption of a mitigation measure monitoring plan or program when the Negative Declaration is approved by the Commission.

3. Notice of Determination

After the Commission's approval of a project for which a Negative Declaration has been approved, the Executive Officer shall file a Notice of Determination.

The Notice of Determination's content shall include:

- a. Project description, identification and location;
- b. Date project approved by LAFCO;
- c. Determination of "non-significant" effect;
- d. Statement that a Negative Declaration has been prepared; and
- e. Address of LAFCO office where a copy of Negative Declaration is filed.

The Notice shall be filed with the Clerk of the Board of Supervisors. If the project requires a discretionary approval from any state agency, the Notice will also be filed with the State Office of Planning and Research.

The filing of the Notice and the posting on a list of such notices starts a 30-day statute of limitations on court challenges to the adequacy of the environmental determination.

F. Environmental Impact Report

If the Executive Officer or the Commission finds, based on substantial evidence contained in the Initial Study and public comments, that a project may have a significant environmental effect, the Executive Officer will initiate the preparation of an Environmental Impact Report (EIR).

1. Purpose

An EIR is an informational document; a major tool in the decision-making process, informing Commissioners and all parties involved of the environmental consequences of project approval/denial/alteration, etc. Its primary functions are to identify and mitigate significant adverse impacts and to provide alternative project and boundary options. An EIR is not an instrument to rationalize approval or denial of a project; nor do indications of adverse impacts require automatic denial. LAFCO has the authority to

balance environmental, economic, social or other objectives as part of its mandate to develop orderly governmental boundaries.

An EIR should be prepared early in the application process to facilitate the integration of environmental considerations in project or boundary design.

The applicant is responsible for submitting all necessary project data for the EIR per the Executive Officer's request.

2. Appeals

The Executive Officer's determination to require an EIR is appealable to the Commission within 10 working days of the issuance of the decision to prepare an EIR. Such appeal must be filed, on LAFCO forms, with the Executive Officer and must include specific substantiation for the appeal, directly related to environmental issues. The appeal shall be heard on the next regularly scheduled Commission agenda that permits adequate public notification. There is no appeal from a Commission requirement for an applicant to prepare an EIR.

3. Notice of Preparation

Within one week subsequent to the Executive Officer's/Commission's decision to prepare an EIR, a Notice of Preparation (NOP) will be mailed to all responsible and affected agencies (including the State Clearinghouse and affected state agencies, if any) and any parties requesting notification.

State review of an EIR will result in the issuance of an identification number which shall be used on all subsequent documents and correspondence.

The NOP shall include sufficient information on the project and its anticipated impacts to facilitate meaningful responses on the environmental issues that may cause significant adverse impacts. Such content to include:

- a. Project description;
- b. Mapped location;
- c. Probable environmental effects; and
- d. A copy of the Initial Study, etc.

It shall be sent via certified mail or other method to document its receipt.

Within 30 days after receipt of the NOP, each Responsible Agency/interested party shall submit to LAFCO specific information directly related to that agency's/party's statutory responsibility for the project; the environmental issues, alternatives, and mitigation measures to be explored; and the agency's/party's role in the project's review, etc.

If LAFCO does not receive a response or request for additional time by the end of the 30-day NOP review period, LAFCO may presume that no response will be made.

4. Scope of EIR

LAFCO may also convene meetings involving all parties (especially at the request of a Responsible Agency) to further assist in the determination of the EIR's scope and content, no later than 30 days after such request. Early and complete scoping, consultation and negotiation are critical to the preparation of an adequate EIR. LAFCO could request use of the County's or a local agency's Environmental Review Committee in a public meeting forum to aid in the identification and resolution of any technical issues. LAFCO will compile all comments and identify in writing the focus for the EIR.

An EIR can be prepared by staff or consultants under contract to LAFCO, coordinated by the Executive Officer or designee. LAFCO may accept data for an EIR from any source subject to independent validation by LAFCO staff. Also, LAFCO may charge an applicant appropriate fees to cover all costs for preparing and processing an EIR.

5. EIR Content

Article 9 of the State Guidelines describes the complete content of all required sections of an EIR. The scoping process can only determine which impacts should be assessed. All other sections are mandatory and will be included in EIRs prepared for LAFCO.

6. Consultant EIRs

The Executive Officer shall use a RFP (Request for Proposal) process to select a consultant to write the EIR. The office shall maintain and update as necessary a list of consultants, a minimum of three from which proposals shall be solicited for each consultant prepared EIR. The

Executive Officer and the applicant will screen the proposals in an attempt to gain a consensus on choosing the consultant. The Executive Officer is responsible for final selection of the consultant. The Commission will review the scope of work, consultant qualifications, contract cost, and all other aspects before authorizing a contract.

The applicant will be charged a fee to cover all contract and staff costs, to be deposited into a LAFCO trust fund. (Note: The contract will be between LAFCO and the consultant which will work solely at the Executive Officer's, not the applicant's, direction.) The Executive Officer will disburse the funds to the consultant at stages specified in the contract based on completion and performance.

In addition to the contract costs, the fees charged will be based on actual staff time involved in, but not limited to:

- a. Consultant selection including bid solicitation and review, submission of information to consultants, etc.;
 - b. Review of Draft EIR, corrections, additions, etc.;
 - c. Compiling comments for preparation of Final EIR; and
 - d. Meetings with applicant, consultant and public regarding EIR preparation.
7. Completion Notice (Section 15085)

As soon as the draft EIR is completed, a Notice of Completion (NOC) must be filed with OPR, denoting the project's description and location, address where EIR copies are available and the period which comments can be submitted. Where the EIR will be reviewed through the State Clearinghouse, the cover form required by the Clearinghouse will serve as the NOC.

8. Agency/Public Review

At the time the NOC is sent, the Executive Officer shall provide public notice of the draft EIR's availability to all organizations, agencies and individuals who previously requested such notice; as well as publication in The Sun and/or local newspapers. The Executive Officer shall also distribute copies of the draft EIRs and requests for comments to all public agencies with jurisdiction within the project area; to persons or organizations previously requesting such copies; to public libraries in the affected

areas; as well as maintaining copies in the LAFCO and any Responsible Agency's offices. The Executive Officer may consult with any person who has special expertise in any environmental issue involved.

Review periods are not to be less than 30 days nor longer than 90 days from the date of the NOC except in unusual situations, per the Executive Officer's discretion. The review period for draft EIRs submitted to state agencies via the State Clearinghouse will be a minimum of 45 days. The last date for comment submittal shall be specified in the request for comments. A lack of response by that date constitutes a 'non-objection' or 'no-comment' by that particular party.

The sufficiency of the EIR per State Guidelines is the only issue to be addressed during this review. Questions/issues regarding the feasibility or desirability of the project itself shall only be considered by the Commission at the appropriate hearing, not integrated into the environmental review process.

The Executive Officer can convene a meeting of the County's or a local agency's Environmental Review Committee to provide a more thorough forum for the determination of EIR adequacy in any instances of complex technical issues or disagreements among experts.

9. Adequacy

The Executive Officer will make preliminary (not appealable) determinations of the EIR's adequacy, utilizing all aspects of the public record; in turn making specific recommendations on adequacy to the Commission, for its findings, at the time the project is heard.

10. Response to Comments on an EIR (Section 15088)

The Executive Officer shall prepare a written response to all comments received during the comment period (and MAY respond to those received after the period): describing the disposition of issues, opinions or facts raised, project revisions or mitigation measures resulting from these comments, reasons for not accepting recommendations, all substantiated by factual information.

The response to comments may be in the form of revisions to the EIR text, a separate section in the final EIR or as notes typed in the margins of the comment letters, depending on the event of the resulting revisions.

11. Preparation of Final EIR (Sections 15089 and 15132)

The Executive Officer/consultant will prepare a final EIR before the Commission makes a decision on the project. Project denial does not require certification of the Final EIR. Contents include:

- a. The draft EIR or a revision;
- b. A list of persons, organizations and agencies commenting on the draft EIR;
- c. Comments/recommendations (verbatim or in summary);
- d. LAFCO's responses to significant points raised during review and consultation;
- e. Plus any other pertinent information.

The Executive Officer may provide an opportunity for the public or agencies to review the final EIR, focusing only on the responses to comments as they relate to document adequacy. Final EIRs shall be available a minimum of 10 days prior to the Commission hearing on a project.

The final EIR shall be submitted to the Commission with the project application and a mitigation measure monitoring plan/program (if necessary) for certification prior to the decision.

12. Certification of Final EIR (Section 15090)

Prior to approving a project for which an EIR has been prepared, the Commission shall certify (via minute record) that:

- a. The final EIR has been completed in compliance with CEQA; and
- b. The final EIR was presented to the Commission which reviewed and considered it prior to approving the project.

If the Commission, through testimony or its own review of the data, finds that the environmental review is incomplete or the EIR does not adequately assess the full range of project implications, it can refer it back to staff for revisions; deferring approval of the project until it can certify the amended final EIR. Under such circumstances, the Commission shall

instruct staff to recirculate/not recirculate the amended EIR in accordance with the extent of requested revisions.

13. Findings (Section 15091)

The Commission cannot approve or carry out a project for which an EIR identifies one or more significant environmental effects unless it makes one or more written findings for each significant effect, each reinforced by substantial evidence in the record. Such findings include:

- a. Changes have been incorporated into the project which avoid or substantially reduce the significant environmental effect(s) identified in the final EIR.
- b. Such changes are not within LAFCO's jurisdiction, but are within the responsibility and jurisdiction of another agency which has adopted such changes or which can and should adopt such changes.
- c. Specific economic, social or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

14. Approval (Section 15092)

LAFCO shall not approve or carry out a project for which an EIR was prepared unless either:

- a. The project, as approved, will not have a significant environmental effect; or
- b. LAFCO has eliminated or substantially reduced all significant effects where feasible per Section 15091, and determined that any remaining significant effects found to be unavoidable per Section 15091 are acceptable due to overriding concerns described in Section 15093.

15. Statement of Overriding Considerations (Section 15093)

If the benefits of a proposed project outweigh its unavoidable adverse effects, these effects may be considered "acceptable." When the Commission allows the occurrence of environmental effects not mitigated to a level less than 'significant,' it shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The Commission's statement of overriding considerations should

be included in the record of the project approval and so stated in the Notice of Determination.

16. Notice of Determination (Section 15094)

The Executive Officer shall file a Notice of Determination following each project approval for which an EIR was considered. The notice shall include:

- a. Project description and location;
- b. Date approved;
- c. Determination of any significant environmental effects;
- d. Statement that an EIR was prepared and certified pursuant to CEQA;
- e. Whether mitigation measures were made conditions of the project;
- f. Whether findings were made per Section 15091;
- g. Whether a statement of overriding considerations was adopted; and
- h. The address of the location of a copy of the final EIR and the project record.

The notice shall be filed with the Clerk of the County Board of Supervisors. If the project requires discretionary approval from a state agency, the notice shall also be filed with OPR. The filing and the posting of such notice starts a 30-day statute of limitations on court challenges to the adequacy of the EIR and environmental determination.

17. Disposition of Final EIR (Section 15095)

The Executive Officer shall:

- a. File a copy of the Final EIR with the San Bernardino County Planning Division and the city where significant environmental effects may occur;

- b. Include the final EIR in all subsequent project administration;
- c. Retain a copy of the final EIR as a public record for a reasonable period; and
- d. Require the applicant to provide a copy of the certified, final EIR to each Responsible Agency.

V. RECONSIDERATION

The Cortese/Knox Act establishes procedures for agencies to request amendments to, or reconsideration of resolutions adopted by the Commission (Govt. Code Section 56857). Whenever the Commission accepts a written request for amendment to, or reconsideration of an adopted resolution, the period for which a CEQA challenge may be filed is tolled while the request for reconsideration is under review by the Commission. Following the Commission's reconsideration, the statute of limitations on the original filing of either the Notice of Determination or Notice of Exemption will continue.

TDA:clh