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MEMO

DATE: December 14, 2010
TO: Natural Resources Advisory Committee (NRAC)
FROM: Joshua Hart, AICP, Planning Director *JGH*
RE: NRAC December 16, 2010 Agenda Item No. 8 (California Environmental Quality Act Seminar)

The California Environmental Quality Act (CEQA) was enacted in 1970 and is codified in the Public Resources Code (Section 21000 et seq.). According to the Guidelines for CEQA (Code of Regulations, Section 15000 et seq.), the basic purposes of CEQA include the following:¹

- (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
- (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

One of the primary CEQA concepts is that of a lead agency, which means the public agency which has the principal responsibility for carrying out or approving a project. Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project (refer to CEQA Guidelines Section 15050 et seq.).

The attached flowchart illustrates the CEQA process. As indicated, the first step in the process is to determine if an activity is a project under CEQA. According to CEQA Guidelines Section 15060(c), an activity is not subject to CEQA if (1) it does not involve discretionary powers by the public agency, (2) the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, or (3) the activity is not a project as defined by CEQA Guidelines Section 15378. According to CEQA Guidelines Section 15378, the definition of a project is as follows:

- (a) "Project" means 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, and that is any of the following:

¹ CEQA Guidelines Section 15002.

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.
 - (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.
- (b) Project does not include:
- (1) Proposals for legislation to be enacted by the State Legislature;
 - (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
 - (3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative.
 - (4) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.
 - (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.
- (c) The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term “project” does not mean each separate governmental approval.
- (d) Where the Lead Agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivision (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

If an activity is determined to be a project under CEQA, the second step is to review for exemption. According to CEQA Guidelines Section 15061, a project is exempt from CEQA if (1) the project is exempt by statute, (2) the project is exempt pursuant to a categorical exemption, (3) there is with certainty no possibility that the activity may have a significant effect on the environment, (3) the project will be rejected or disapproved, or (5) the project is exempt per CEQA Guidelines Article 12.5 (Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects). If a project is deemed exempt, a Notice of Exemption (NOE) is filed, which begins the 35-day statute of limitation to initiate litigation under CEQA. If no NOE is filed, the statute of limitations is 180 days.

Statutory exemptions (CEQA Guidelines Article 18) are exemptions granted by the legislature. Examples of statutory exemptions include feasibility and planning studies, adoption of timberland preserve zones, ministerial projects, emergency projects, Olympic games, etc. Statutory exemptions apply even if the activity may have an effect on the environment.

Categorical exemptions (CEQA Guidelines Article 19) include numerous activities and project classes that have been determined not to have a significant effect on the environment.

Examples of categorical exemptions include minor additions to existing facilities, replacement or reconstruction, information collection, acquisition of land for wildlife conservation, designation of wilderness, leasing, infill development projects, etc. Categorical exemptions are not appropriate for projects when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

If a project is deemed to be subject to CEQA, and does not qualify for an exemption, the next step in the standard CEQA procedure is to prepare an Initial Study to determine whether to process a (Mitigated) Negative Declaration (MND) or Environmental Impact Report (EIR). An (M)ND is appropriate for projects that will not have a significant effect on the physical environment. An EIR is appropriate for projects that may have potentially significant effects on the physical environment that cannot be mitigated. An example of an Initial Study is included in CEQA Guidelines Appendix G and includes 17 environmental topics.

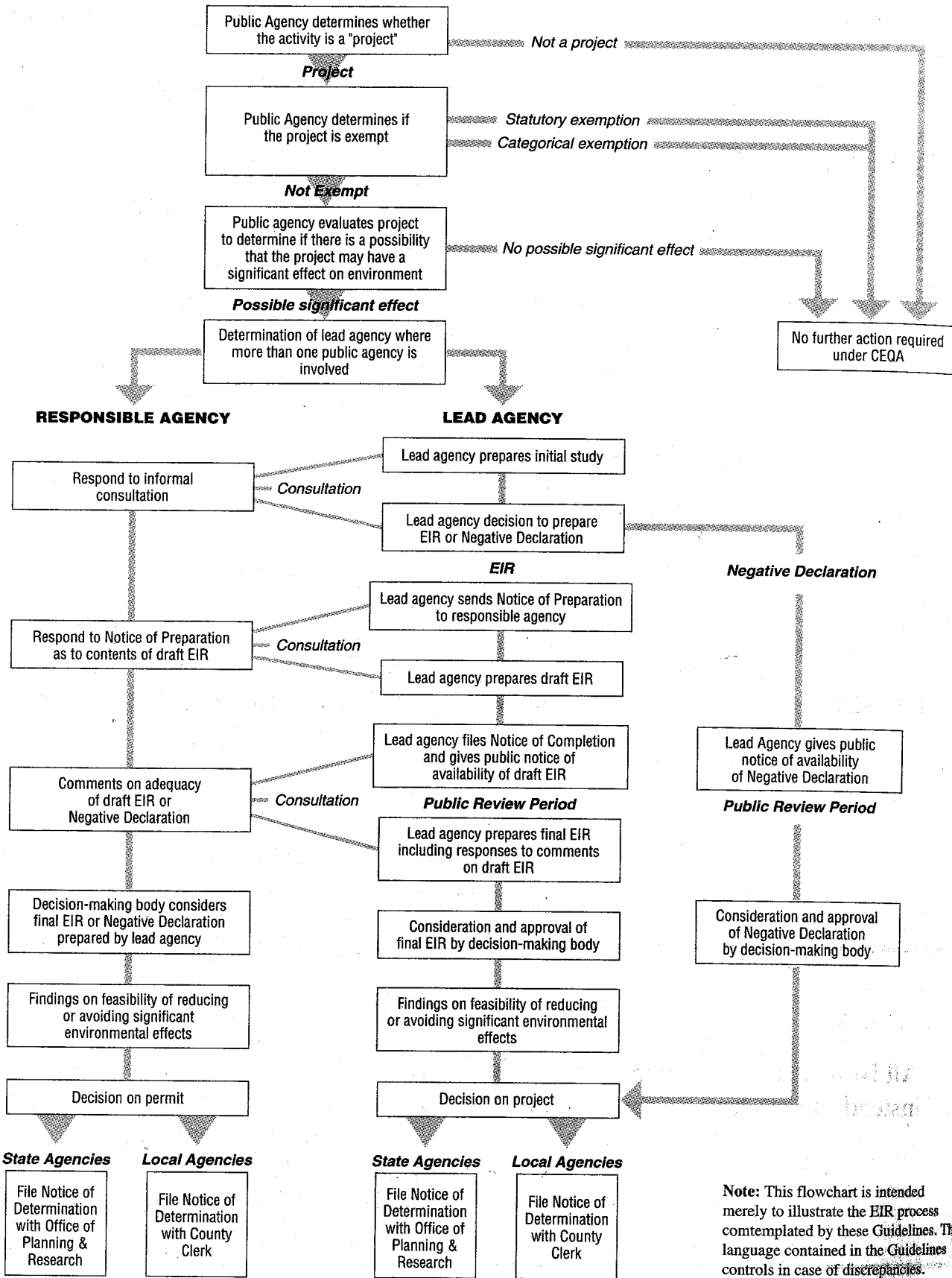
If an (M)ND is deemed appropriate, a 30-day public review period is required. The Lead Agency shall consider comments received prior to adopting the (M)ND. If the project is approved, the Lead Agency must adopt findings and should file a Notice of Determination (NOD), which begins the 30-day statute of limitation to initiate litigation under CEQA. If no NOD is filed, the statute of limitations is 180 days. The standard of adequacy for an (M)ND is “fair argument.” Fees to the Department of Fish and Game are paid upon filing the NOD; the fee for an (M)ND starting on January 1 is \$2,044.00.

If an EIR is deemed appropriate, two public review periods are required. The first is a 30-day public review period for the Notice of Preparation. The second is a 45-day public review period for the Draft EIR. The Lead Agency shall provide responses to comments 10 days prior to the EIR. If the project is approved, the Lead Agency must adopt findings. If even with mitigation the project will result in significant environmental impacts, the Lead Agency must adopt a Statement of Overriding Considerations. If the project is approved, the Lead Agency should file a Notice of Determination (NOD), which begins the 30-day statute of limitation. If no NOD is filed, the statute of limitations is 180 days. The standard of adequacy for an EIR is “substantial evidence.” Fees to the Department of Fish and Game are paid upon filing the NOD; the fee for an EIR starting on January 1 is \$2,839.25.

The process for preparing MNDs and EIRs is complex and subject to a vast body of case law. Article 6 of the CEQA Guidelines specified the (M)ND process, and Article 7 does the same for EIRs. Article 9 describes the contents of environmental documents, and Article 13 describes review and processing requirements. Article 11 details different environmental document types. Article 14 details projects also subject to the National Environmental Policy Act (NEPA).

Thank you. If you have any questions, please call me at (760) 878-0268 or email me at jhart@inyocounty.us.

Appendix A CEQA PROCESS FLOW CHART



Note: This flowchart is intended merely to illustrate the EIR process contemplated by these Guidelines. The language contained in the Guidelines controls in case of discrepancies.