



RULES AND REGULATIONS TO IMPLEMENT THE
California Environmental Quality Act (CEQA)
AS AMENDED

(PUBLIC RESOURCES CODE 21000 et. seq.)

prepared by

**Imperial Local Agency Formation Commission
(LAFCO)**

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INTRODUCTION

State law requires that every lead agency have defined rules or guidelines to implement the California Environmental Quality Act (CEQA).

This manual therefore, is the Imperial Local Agency Formation Commission (LAFCO) "Rules and Regulations to Implement CEQA". These regulations shall be applicable to all projects.

Section 1: POLICY

- a) **General:** The policy of the LAFCO and any adopting agency shall be the same as, and in support of, those policies defined by the State Legislature in the California Environmental Quality Act (Division 13, Public Resources Code, (PRC), 21000 et. seq.) as may be amended by Legislative Act.
- b) **Co-Lead:** It is the policy of LAFCO that in the case of substantial projects, in order to have a coordinated and legally defensible CEQA document, that the County/City/District/Agency and LAFCO will process to the extent possible the project on a "co-lead" basis.

FINDINGS: The LAFCO finds that where it (LAFCO) is a responsible agency only and the lead agency has not prepared an environmental document that meets the minimum standards expected under LAFCO rules, or under the CEQA statutes or guidelines that it is in the interest of all parties including the applicant to have a coordinated and well prepared CEQA document, and LAFCO would therefore have to prepare its own.

The LAFCO therefore finds that under the format of "co-lead" preparation of environmental documentation is desirable, particularly in large or complex projects.

Section 2: PURPOSE

These Rules are designated to implement the California Environmental Quality Act of 1970 (CEQA) and the Guidelines thereto, which are contained in Title 14, Chapter 3 of the California Administrative Code, now cited as the CALIFORNIA CODE OF REGULATIONS (CCR) (commencing with Section 15000).

These Rules shall apply to any project for which the LAFCO, or any District, Agency, and Department, which is governed by the LAFCO is the lead agency. The provisions contained herein are not intended to replace either the terms of CEQA or the terms of the accompanying Guidelines. In the event that any of the following rules or procedures conflict with the provisions of CEQA or the Guidelines, the provisions of CEQA or the Guidelines shall control.

Section 3: DEFINITIONS

The words and phrases used in these Rules shall have the meaning as used in CEQA and Guidelines, except for the following:

- (A) **"CEQA Compliance & Implementation"** The LAFCO Executive Officer is the "officially" designated environmental compliance designee and shall be responsible for the proper and effective implementation of the California Environmental Quality Act (CEQA). This shall apply for all public sponsored as well as private projects.
- (B) **"Clerk"** shall refer to the Clerk to LAFCO.
- (C) **"Decision-making body"** shall refer to LAFCO.
- (D) **"Discretionary Project"** means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.
- (E) **"EIR" or "Environmental Impact Report"** refers to a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects.
- (F) **"Guidelines"** shall refer to the State Guidelines for implementation of CEQA (California Code of Regulations, Title 14, Division 6, Chapter 3) and as thereafter amended.
- (G) **"Initial Study"** refers to the preliminary analysis prepared by the lead agency (LAFCO, where LAFCO is lead) to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant effects to be analyzed in an EIR.
- (H) **"Lead Agency"** means the public agency (LAFCO, where LAFCO is the first or only agency to act, more generally it will be a City, County or District), which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR, Mitigated Negative Declaration, or Negative Declaration, is required for the project and will cause the appropriate document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in the Guidelines, Section 15051. If LAFCO is not the "lead" agency, the LAFCO shall be consulted by the "lead" agency before a final decision on a project environmental process is made.

- (I) **"Ministerial"** describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. Law is applied to the facts as presented, but no special discretion or judgment is employed in reaching a decision.
- (J) **"Mitigated Negative Declaration"** refers to a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but mitigation measures will be adopted in order to reduce the impacts on the environment to less than significant.
- (K) **"Mitigation Measures"** include:
 - (a) Avoiding the impact altogether by not taking a certain action.
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 - (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- (L) **"Negative Declaration"** refers to a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore will not require an EIR.
- (M) **"Notice of Completion"** refers to a brief notice filed with Office of Planning and Research (OPR) by a lead agency as soon as it has completed a Draft EIR and is prepared to send out copies for review.
- (N) **"Notice of Determination"** refers to a brief notice filed by a public agency after it approves or determines to carry out a project, which is subject to CEQA.
- (O) **"Notice of Preparation"** refers to a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project.
- (P) **"Executive Officer"** shall mean the Executive Officer to LAFCO as appointed by LAFCO. The Executive Officer may delegate CEQA compliance responsibility to staff or consultant(s) on a case by case basis; however the Executive Officer shall have the final approval.

- (Q) **"Project"** shall mean the whole of an action, which has the 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:
- (a) An activity directly undertaken by any public agency.
 - (b) An activity undertaken by a person which is supported, in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (c) 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.
- (R) **"Responsible Agency"** means a public agency, which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR, Mitigated Negative Declaration, or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency, which have discretionary approval power over the project.
- (S) **"Trustee Agency"** means a state 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. Trustee Agencies include:
- (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and the game refuges, ecological reserves, and other areas administered by the department.
 - (b) The State Land Commission with regard to state owned "sovereign" lands such as the beds of navigable water and state school lands.
 - (c) The State Department of Parks and Recreation with regard to units of the State Park System.
 - (d) The University of California with regard to sites within the Natural Land and Water Reserves System.

Section 4: GENERAL RESPONSIBILITIES OF THE LAFCO

- (A) The Executive Officer shall be responsible for reviewing each project application submitted to or by the County, City, or Private entity, to determine the appropriate action to be taken under the standards and conditions set by CEQA and these Rules. This shall also include making a determination on a project-by-project basis whether to seek co-lead status with the City/District.
- (B) The Executive Officer shall be responsible for assuring that the mandated time periods prescribed by CEQA and this document are met.
- (C) The Executive Officer shall be responsible and have the sole discretion for accepting and determining completeness of all applications for projects received by the LAFCO

Section 5: APPLICATION PROCEDURES

- (A) Initial Discussion:
 - (1) The Executive Officer may meet with Applicant, or at Applicant's request, to review the project proposal. This is referred to as a Pre-Application Meeting.
 - (2) The Executive Officer shall provide the Applicant with the application package, fee schedule, and indemnification agreement.
 - (3) The Executive Officer shall give general guidance in the application procedures and identify necessary information and materials to be provided by the Applicant.
 - (4) The Executive Officer shall meet with the City, District, or County to establish which projects need to be prepared on a "co-lead" basis.
 - (5) The City, District, or County shall notify the Executive Officer of any pending application for a land use project that will concurrently seek an annexation or boundary change.
- (B) Determination of Completeness:
 - (1) The Applicant shall provide to the LAFCO: a check for all required fees, all information shown on the forms provided by the LAFCO, and a completed, signed, and dated application, including an "Indemnification Agreement", and all other supporting documentation requested by LAFCO.

(2) The Executive Officer shall:

- (a) Review the application and all supporting data for completeness, and whether the appropriate fees have been submitted.

Note: Depositing the check does not constitute acceptance.

- (b) Forward a copy of each such application to all interested parties or agencies;
- (c) Inform the applicant of any "known" potential environmental impacts; and,
- (d) Make a determination of completeness within thirty (30) days of receipt of application forms supporting documentation and necessary fees from Applicant.

(C) Application Found Incomplete:

- (1) If the Executive Officer determines the application to be incomplete, the Executive Officer shall inform the Applicant in writing, by Letter of Transmittal and advise the Applicant what is necessary to make the application complete. A copy of the Letter of Transmittal shall be placed in the file indicating this action was taken.
- (2) The Applicant must provide the LAFCO with the additional and/or revised information needed. Upon submission of the requested additional or revised information, the Executive Officer shall determine the completeness of the application in accordance with (B) above.
- (3) If after 60 days from date of rejection finding the project incomplete and the Applicant has not supplied the necessary information to complete the application, the application and supporting documentation shall be returned to applicant along with all unused fees, and the project file closed. The Executive Officer shall refund only those fees not already used in the processing of the application.
- (4) On any project that is returned, pursuant to provisions of paragraph (3) above, the Applicant shall file a new application with full (new) fees.

Section 6: EXEMPTIONS

- (A) **Determination of Exemption:** The Executive Officer shall make a determination as to whether the project is exempt from CEQA and these Rules.
- (B) **Project Type:** The following projects are exempt from the requirements contained in these Rules:
 - (1) CEQA Guidelines exemptions are as follows
 - (a) **25 Statutory Exemptions,** CEQA Guideline, Sections 15260-15285.
 - (1) **Ongoing Projects;** Only applies to projects that were carried out by a public agency prior to 11/23/70. Additionally this exemption does not apply if project has a significant amount of unused funds and it is still feasible to modify the project to mitigate potentially adverse environmental effects or in the event the public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.
 - (2) **Feasibility and Planning Studies:** A project involving only feasibility or planning studies for possible future actions which the decision making body has not approved, adopted, or funded, it does require consideration of environmental factors.
 - (3) **Discharge Requirements:** The State Water Resources Control Board and the regional boards are exempt, when adopting waste discharge requirements, except as defined in the Federal Water Pollution Control Act.
 - (4) **Timberland Preserves:** Adoption of timberland preserve zones under Government Code Sections 51100 et seq.
 - (5) **Adoption of Coastal Plans and Programs:** CEQA does not apply to activities and approvals pursuant to the California Coastal Act, (PRC, Sections 30000, et seq).
 - (6) **General Plan Time Extensions:** CEQA does not apply to time extensions granted by the Office of Planning and Research for the preparation and adoption of one or more elements of the County General Plan.
 - (7) **Financial Assistance to Low or Moderate Income Housing:** CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for such developments, as defined by Health and Safety Code, Section 50093.

- (8) **Ministerial Projects:** Ministerial permits are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. Further defined by Guidelines, Section 15268.
- (9) **Emergency Projects:** Emergency projects as defined by Guidelines, Section 15269 are exempt from the requirements of CEQA.
- (10) **Projects Which Are Disapproved:** Projects that are rejected prior to the initiation of the CEQA process are exempt from said process, provided the project is not later resubmitted.
- (11) **Early Activities Related to Thermal Power Plants:** For actions taken by a public agency, relating to the expenditure, obligation, or encumbrance of funds, by said public agency for planning, engineering, or design purposes or for "conditional" sale or purchase of equipment, fuel, water (except groundwater) steam or power. However the thermal power plants will be subject to CEQA and any documentation prepared as to site or facility will include the environmental impact of the early activities.
- (12) **Olympic Games:** CEQA does not apply to the activities or approvals necessary to the bidding for hosting and funding or carrying out of Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games.
- (13) **Rates, Tolls, Fares, and Charges:** The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies, which are for the following purposes: meeting agency operating expenses, including, wages, benefits; purchasing or leasing of supplies or equipment, materials; meeting financial reserves; funding for capital projects necessary to maintain public services or obtaining funds for intra-city transfers. However rate increases to fund capital projects for the "expansion" of a system are subject to CEQA .
- (14) **Family Day Care Homes:** The establishment or operation of a large family day care home, which provides in-home care for up to twelve (12) children, as defined in the Health and Safety Code, Section 1596.78.

- (15) **Specified Mass Transit Projects:** The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities. Facility extensions not to exceed four (4) miles in length, which are required for transfer of passengers to or from exclusive public mass transit guideway or busway public transit services.
- (16) **Transportation Improvement and Congestion Management Programs:** The development and adoption of a regional transportation improvement program or the state transportation program, however individual projects developed pursuant to these programs are subject to CEQA review.
- (17) **Projects Located Outside California:** CEQA does not apply to any project or portion thereof which is located outside of the State of California. Said projects may still be subject to National Environmental Policy Act or the state in which the project is located if adopted environmental regulations exist.
- (18) **Application of Coating:** CEQA does not apply to a discretionary decision by an Air Quality Management District for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant provided the district makes the applicable findings in Guidelines, Section 15278.
- (19) **Housing For Agricultural Employees:** CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in Guidelines, Section 15279.
- (20) **Low-Income Housing Projects:** CEQA does not apply to any development project, which consists of the construction, conversion, or use of residential housing of not more than 45 units in an urbanized area, as defined in Guidelines, Section 15280.
- (21) **Air Quality Permits:** CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an Air Pollution Control District or Air Quality Management District pursuant to Title V, as defined in the Health and Safety Code, Section 390533 or pursuant to the Air District Title V program established under the Health and Safety Code, Section 42301.10, 42301.11 and 42301.12, unless the issuance, modification, amendment, or renewal authorized is a physical or operational change to a source or facility.

- (22) **Other Statutory Exemptions:** CEQA does not apply to the "Other Statutory Exemptions" (a) through (w) as defined in Guidelines, Section 15282.
- (23) **Housing Needs Allocation:** CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county, pursuant to Government Code, Section 65584.
- (24) **Pipelines:** CEQA does not apply to any project consisting of the inspection, maintenance, repair, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, as defined in Guidelines, Section 15284.
- (25) **Transit Agency Responses to Revenue Shortfalls:** CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, as defined in Guidelines, Section 15285.

Note: For a complete explanation of the Statutory Exemptions listed above review the CEQA Guidelines, Sections 15260 – 15285 or as amended.

- (b) **32 Categorical Exemptions,** CEQA Guidelines, Sections 15300-15332.
 - (1) **Existing Facilities:** Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, as defined in Guidelines, Section 15301.
 - (2) **Replacement or Reconstruction:** Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, as defined in Guidelines, Section 15302.

- (3) **New Construction or Conversion of Small Structures:** Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure, as defined in Guidelines, Section 15303.
- (4) **Minor Alterations to Land:** Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation, which do not involve removal of healthy, mature, scenic trees, except for forestry and agricultural purposes, as defined in Guideline, Section 15304.
- (5) **Minor Alterations in Land Use Limitations:** Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any change in land use or density, such as lot line adjustments, variances, lot mergers, reversion to acreage as per the Subdivision Map Act (State of California Government Code, Section 66410-66499.58), or the issuance of minor encroachments, further defined in Guideline, Section 15305.
- (6) **Information Collection:** Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities, which do not result in a serious or major disturbance to an environmental resource. These are strictly for information gathering purposes, or as part of a study leading to an action, which a public agency has not yet approved, adopted or funded.
- (7) **Actions by Regulatory Agencies for Protection of Natural Resources:** Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.
- (8) **Actions by Regulatory Agencies for Protection of the Environment:** Class 8 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and reclamation of standards allowing environmental degradation are not included.

- (9) **Inspections:** Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.
- (10) **Loans:** Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions, further defined in Guidelines, Section 15310.
- (11) **Accessory Structures:** Class 11 consists of construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial or institutional facilities, such as on-premise signs, small parking lots, or the placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in publicly owned parks, stadiums, or other facilities designed for public use.
- (12) **Surplus Government Property Sales:** Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or area wide concern identified in Guidelines, Sections 15206 & 15312.
- (13) **Acquisition of Land for Wildlife Conservation Purposes:** Class 13 consists of acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under the Fish and Game Code, Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.
- (14) **Minor Additions to Schools:** Class 14 consists of minor additions within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.
- (15) **Minor Land Divisions:** Class 15 consists of the division of property in "urbanized areas" zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20%.

- (16) **Transfer of Ownership of Land in Order to Create Parks:** Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources, further defined in Guidelines, Section 15316.
- (17) **Open Space Contracts or Easements:** Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interest in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.
- (18) **Designation of Wilderness Areas:** Class 18 consists of the designation of wilderness areas under the California Wilderness System.
- (19) **Annexations of Existing Facilities and Lots for Exempt Facilities:** Class 19 consists of only the following annexations: (a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing government agency whichever is more restrictive, provide, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; (b) Annexations of individual small parcels of the minimum size for facilities exempted by Guidelines, Section 15303 "New Construction or Conversion of Small Structures."
- (20) **Changes in Organization of Local Agencies:** Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised such as the establishment of a subsidiary district, consolidation of two or more districts having identical powers or the merger with a city of a district lying entirely within the boundaries of the city.
- (21) **Enforcement Actions by Regulatory Agencies:** Class 21 consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency, as defined in Guidelines, Section 15321.

- (22) **Educational or Training Programs Involving No Physical Changes:** Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures such as changes in curriculum or training methods, or change in the grade structure in a school which does not result in changes in student transportation.
- (23) **Normal Operations of Facilities for Public Gatherings:** Class 23 consists of the normal operations of existing facilities for public gathering facilities for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purpose of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three (3) years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but not be limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools, and amusement parks.
- (24) **Regulation of Working Conditions:** Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate, employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work.
- (25) **Transfer of Ownership of Interest in Land to Preserve Existing Natural Conditions:** Class 25 consists of the transfer of ownership in interests of land in order to preserve open space, habitat, or historic resources as defined in Guidelines, Section 15325.
- (26) **Acquisition of Housing for Housing Assistance Programs:** Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

- (27) **Leasing New Facilities:** Class 27 consists of leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA and meets the standards as defined in Guidelines, Section 15327.
- (28) **Small Hydroelectric Projects at Existing Facilities:** Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where the capacity of the generating facility is 5 megawatts or less and defined in Guidelines, Section 15328. The operation of the generating facilities will not change the flow regime in the affected stream, canal or piping.
- (29) **Cogeneration Projects at Existing Facilities:** Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in Guidelines, Section 15329.
- (30) **Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances:** Class 30 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing \$1 million or less. No cleanup action shall be subject to this Class 31 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit, with the exception of low temperature thermal desorption, or the relocation of residences or businesses, or the actions involves the potential release into the air of volatile organic compounds as defined in the Health and Safety Code, Section 25123.6. or as further defined in Guidelines, Section 15330.
- (31) **Historical Resource Restoration/Rehabilitation:** Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995).

- (32) **In-Fill Development Projects:** Class 32 consists of projects characterized as in-fill development meeting the following conditions:
- (a) The project is consistent with the County's General Plan designation and policies as well as with the County's Land Use Ordinance and Zoning.
 - (b) The proposed project occurs within the County limits on a site of no more than five acres substantially surround by urban uses.
 - (c) The project site has no value as habitat for endangered, rare or threatened species.
 - (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
 - (e) The site can be adequately served by all required utilities and public services.

Note: For a complete explanation of the Categorical Exemptions listed above review the CEQA Guidelines, Sections 15300 – 15332 or as amended.

- (2) The County of Imperial Categorical Exemptions has listed the following:

- (1) **Clearing or Leveling of Agricultural Land:** Clearing or leveling of land for agricultural use; (This does not include any grading or excavating not directly related to agriculture field leveling).
- (2) **Geothermal Temperature gradient wells:** Installation and operation of temperature gradient wells for locating geothermal resources. This does not preclude other aspects of geothermal operations from CEQA review.
- (3) **Mining Test Boring:** Test boring to determine the type of material for future mining activities. However, it must meet SMARA threshold for minimum surface disturbance, i.e. one acre or less.
- (4) **Monitoring wells:** Installation of and operation of monitoring wells (for example vadose) for groundwater monitoring. The installations of such wells are exempt from CEQA, however the project's, which typically necessitate installation and operation of monitoring wells, may not be exempt from CEQA review.

- (5) **Certificate of Compliance:** Where a project requesting a Certificate of Compliance is consistent with the Subdivision Map Act and does not result in a change in the physical layout of the area, which would potentially result in an adverse effect the environmental.
- (C) **Exceptions to Exemptions:** Projects that are located in sensitive environments; would result in cumulative impacts; have a significant effect on the environment; affect scenic highways; affect historical resources, and/or are hazardous waste sites do not qualify as exemptions, pursuant to Guidelines Section 15300.2.
- (D) **Notice of Exemption:**
 - (1) When the Executive Officer determines that a project is exempt from CEQA and after the project is approved, a Notice of Exemption may be filed. The Notice shall include: (1) a brief description of the project; (2) a finding that the project is exempt from CEQA, including a citation to the Guidelines section or statute under which it is found to be exempt; and (3) a brief statement of reasons to support the finding.
 - (2) The Notice of Exemption may be filed with the County Clerk/Recorder within five working days of the project's approval. Copies of such notice shall be made available for public inspection and a list of such notices shall be posted by the Office of the Clerk and shall remain posted for a period of thirty (30) days.
 - (3) The appeal procedure shall be to the full Commission The Applicant, submitting Department, or interested party may appeal by submitting appropriate fees.

Section 7: INITIAL ENVIRONMENTAL ASSESSMENT PROCEDURE

- (A) **Initial Study:**
 - (1) All Applicants for discretionary project or approval of an application and projects, subject to CEQA, shall submit a completed application to the Executive Officer. Upon ACCEPTANCE (not receipt) pursuant to Section 5, the Executive Officer shall transmit a copy of the full application package to each interested agency.
 - (2) Fees for the Initial Study shall be charged in accordance with the adopted LAFCO regulations, or as later amended.
 - (3) The LAFCO, as Lead Agency, shall review all project applications subject to CEQA and make the following determinations based on the type of project under review:
 - (a) Determine whether the particular activity is a "project" subject to CEQA, as defined in these Rules and as defined by Guidelines Section 15378;

- (b) Determine whether the project is exempt from CEQA, pursuant to Guidelines, Section 15061;
 - (c) Determine whether the project is ministerial, pursuant to Guidelines, Section 15268;
 - (d) Determine whether or not the project is categorically exempt, pursuant to Guidelines, Article 19, Section 15300 et. seq. However, all Class exemptions are inapplicable when the activity is listed as an Exception, pursuant to Guidelines, Section 15300.2;
 - (e) Determine whether or not the project is an emergency project, Guidelines, Section 15269;
 - (f) Determine on a case-by-case basis those activities which fall within an existing EIR, Mitigated Negative Declaration, or Negative Declaration that is adequate to cover a project, and,
 - (g) CEQA does not apply to projects, which a Lead Agency has rejected or disapproved after an initial screening based on the merits of the project, Guidelines 15270.
- (4) The Executive Officer shall consult with Responsible agencies, Trustee agencies, and others responsible for any natural resources affected by the project to determine the environmental concerns for each agency involved in the project application as appropriate. These concerns may be addressed in the Initial Study, and at LAFCO.
 - (5) The Initial Study shall be prepared using the current Environmental Checklist Form, found in Appendix B of these Rules and in Appendix G of the Guidelines, or as amended.
 - (6) Applications cannot be amended without permission of the reviewing body, i.e. the Lead Agency. If the Applicant requests an amendment to an application, the Lead Agency may require, as a condition of permission to substantially amend an application, that the applicant withdraw the original application and reapply, with or without a new filing fee, or agree to a new filing date sufficiently subsequent to the original filing date to permit the staff and reviewing agencies additional time required to review non-substantial changes as appropriate.
 - (7) All public and private applications that seek a LAFCO action or entitlement must contain a "project description" from which it can be determined whether the project may have a significant effect on the environment. The application itself may indicate sufficient data from which any significant, adverse environmental impacts may be assessed. The project description shall include:
 - (a) A detailed map showing the precise location and boundaries of the proposed project.

- (b) A statement of the objectives sought by the proposed project, including the purpose of the project.
 - (c) A general description of the project's technical, economic, and environmental characteristics.
 - (d) Analysis to determine consistency with the Imperial County General Plan, and if appropriate with a City's General Plan.
 - (e) Major projects may require more than the usual information required of the Applicant, including statistical data such as demographics, etc.
 - (8) On ALL projects, the Initial Study marks shall be documented in writing, as to why they were so marked.
 - (9) Initial Studies may be prepared by a consultant hired by the Executive Officer (LAFCO) with consultation with applicant and with the Applicant paying the costs for such an Initial Study prepared by the consultant. The LAFCO shall require independent verification through its own efforts, or by contract, of any information submitted by an Applicant to be paid by the Applicant.
 - (10) After the Initial Study has been completed by the LAFCO the Applicant may modify the project to mitigate any significant, adverse environmental impacts of the project. These mitigations will be noted as "Mitigation Measures" in the LAFCO agenda package. A Mitigation measure shall be monitored by LAFCO pursuant to a "Mitigation/Monitoring program".
 - (11) Copies of Initial Studies shall be available for public review at the LAFCO office upon request. The person requesting the copy shall pay the cost of the copy of the Initial Study.
 - (12) Projects Initial Study(s) shall be published in a newspaper of greatest circulation within the County at a minimum of ten (10) days prior to the final decision by the Executive Officer. The Executive Officer will direct mail notice to the applicant and any party having requested a notice in writing and be paid any Time and Materials.
- (B) Appeal:

The Applicant or any member of the public may appeal to the LAFCO on the CEQA determination by the Executive Officer. Such appeal must be accompanied by a fee established by the LAFCO. Any such appeal must be filed as follows:

- (1) Filed with the Executive Officer to LAFCO within ten (10) calendar days of the date of decision. When filing an appeal clearly state the reason(s) for the appeal, and provide all information necessary to the Executive Officer of the Executive Officer's determination.

- (2) When so filed, the appeal shall stay further processing of the application, and shall stay all applicable time frames.
- (3) Prior to hearing any appeal of the Executive Officer's decision, the Executive Officer shall fix a time and place of hearing thereon. No less than 10 days prior to the date of hearing, notice of the date, time and place of hearing, location of the property and the substance of the appeal shall be given by the following methods:
 - (a) A one time publication in a newspaper of greatest circulation at a minimum of ten (10) days prior to hearing date, and
 - (b) Direct mail notice to applicant, all parties of record interest, all parties having filed a written request to receive notices, all contiguous property owners; and, one of the following:
 - 1) In the R-1, R-2, R-3, R-4 Zones, all adjacent property owners' whole property is within 500 feet of the exterior boundary of the subject parcel,
 - 2) In the A-1, A-2, A-3 and R-A Zone, all adjacent property owners whose property is within 1/2 mile of the exterior boundary of the subject parcel,
 - 3) In all zones, except as specified in "1" and "2" above, all adjacent property owners whose property is within 1,000 feet of the exterior boundary of subject parcel.
 - (c) Posting the Commission agenda at the LAFCO Office.
- (4) The decision, on appeal, by LAFCO shall be deemed final.
- (C) Preparation of a Negative Declaration (ND) / Mitigated Negative Declaration (MND):
 - (1) When the Executive Officer determines that preparation in the manner specified by the Guidelines of a Negative Declaration, or Mitigated Negative Declaration, is appropriate, the Executive Officer shall:
 - (a) Prepare and transmit a Notice that the LAFCO has decided to prepare a Negative Declaration, or Mitigated Negative Declaration, to each Responsible, Trustee, and other affected agencies pursuant to the Guidelines Section 15072, as appropriate;
 - (b) Mail a notice of intent to adopt a Negative Declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing.

- (c) Publish a Public Notice of Proposed Negative Declaration, or Mitigated Negative Declaration (This Notice shall indicate that interested parties have ten (10) calendar days from the date of decision to appeal the Negative Declaration, or Mitigated Negative Declaration determination).
 - (d) The County Clerk shall post such notices in the Office of the County Clerk within 24 hours of receipt for a period of at least twenty (20) days.
 - (e) Advise the applicant of the proposed Negative Declaration, or Mitigated Negative Declaration and,
- (2) Where one or more state agencies will be a Responsible or Trustee Agency for the project or have jurisdiction by law over natural resources affected by the project, the Executive Officer shall appropriately file sufficient copies of the proposed Negative Declaration, or Mitigated Negative Declaration with the State Clearinghouse for distribution to these agencies. The public review period for the State Clearinghouse distribution is 30 (thirty) days unless shortened by the State Clearinghouse.
 - (3) The LAFCO shall consider the Negative Declaration or Mitigated Negative Declaration within 105 days of the completed application prior to the project being approved or disapproved.
 - (4) If the LAFCO, after reviewing the project substantially changes or deletes any of the "mitigation" measures that the Applicant has agreed to, then the LAFCO shall do one of the following:
 - (a) Make specified "Findings" for each change or modification based on substantial evidence on the record; or,
 - (b) If a "mitigation" measure is deleted from the conditions agreed to by the Applicant that changes the project description, then the project shall go back to the Executive Officer for another environmental assessment due to the change in the project description by the decision-making body. The decision-making body shall act within the CEQA time frames and shall, if necessary deny a project to meet State-mandated time frames, unless applicant agrees to legally extend the mandated time limit.
 - (5) The Executive Officer shall file a Notice of Determination within five (5) working days, once a final decision approving a project subject to CEQA by the decision-making body is made, with the County Clerk/Recorder and the appropriate State Office as required by the Guidelines.
 - (6) The filing of a Notice of Determination and subsequent posting starts a 30-day statute of limitations for court challenge to the approval under CEQA.

Section 8: PREPARATION OF ENVIRONMENTAL IMPACT REPORTS (EIR)

- (A) In the event that the "project" has been found to have a significant effect on the environment, as determined by the Executive Officer, and not appealed by the Applicant, then an EIR shall be prepared. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the local decision-making body shall respond to the information found in the prepared environmental documentation by one of the following methods:
- (1) Altering the proposed project;
 - (2) Imposing conditions on the approval of the project;
 - (3) Choosing an alternative way of meeting the same need;
 - (4) Disapproving the project;
 - (5) Make the finding that changing or altering the project is not feasible; or,
 - (6) Make the finding and Statement of Overriding Considerations that the unavoidable significant environmental damage is acceptable (Guidelines, Section 15093).

The EIR may be in the form of a focused EIR, a subsequent EIR, a supplement to an EIR, an addendum to an EIR, staged EIR, program EIR, or other type of EIR pursuant to Article 11, Guidelines, Section 15160, et. seq. as determined appropriate by the ERC and/or Planning Commission.

- (B) Documentation Source: When the Executive Officer determines that preparation of Environmental Impact Report is appropriate and no appeal is filed within ten (10) days, the Executive Officer shall:
- (1) Prepare a letter to Applicant outlining fees, CEQA procedures and may include a meeting with the approved consultant(s) and/or project proponent, if necessary, pursuant to Section 9 of these Rules;
 - (2) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.
 - (3) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.

- (4) The notice of preparation shall include a description of the project, the location of the project, and the probable environmental effects of the project.
 - (5) Prepare, or cause to be prepared, a Draft and Final EIR in the manner specified by the CEQA Guidelines, and these County Rules.
- (C) Private Projects:
 - (a) The Executive Officer shall determine shall have the authority from the LAFCO to authorize preparation of the Environmental Impact Report by contract, and shall attempt to do so within 45 days of the Executive Officers determination, or on appeal to the Commission within 45 days of the Commissions decision.
 - (b) Fees for (A) and (B) are established by LAFCO.
- (D) Draft EIR (DEIR):
 - (1) The Draft EIR shall be prepared in accordance with these Rules and State Guidelines.
 - (2) The LAFCO shall determine if the Draft EIR is complete. When the Draft EIR is satisfactorily completed, a Notice of Completion (NOC), via Transmittal Form, shall be filed with the appropriate State Office along with at least 10 (or as required) copies of the DEIR.
 - (3) A Public Notice indicating public availability of the Draft EIR for review shall be published as required by the Guidelines Section 15087, and shall include a brief description of the project, its proposed location, an address where copies of the DEIR are available for public review/comment, and the period during which comments will be received.
 - (4) The notice required under this section shall be posted in the office of the county clerk for a period of at least thirty (30) days. The county clerk shall post such notices within 24 hours of receipt.
 - (5) The public review period for a draft EIR should not be less than 30 days nor longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse
 - (6) Comments received after the deadline need not be evaluated or considered, but may be forwarded to the decision-making body for consideration.
 - (7) The NOC and Draft EIR shall also be circulated to the same persons and agencies receiving the Notice of Preparation (NOP).
 - (8) The Draft EIR shall be sent to all respondents to the NOP.

- (E) Recirculation of the DEIR prior to Certification
- (1) The Executive Officer shall recirculate the DEIR when significant new information is added to the DEIR after notice is given of the availability of the DEIR for public review, but before certification by the decision-making body. As used in this Section the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to the DEIR is not "Significant" unless the DEIR is changed in a way that deprives the public of the meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.
 - (2) "Significant new information" requiring recirculation shall be as defined by the Guidelines Section 15088.5.
 - (3) The recirculation of the DEIR requires the same noticing and comment period as established under Section (D) "Draft EIR" above.
- (F) Final EIR (FEIR):
- (1) After evaluating the comments received from persons who have reviewed the Draft EIR, the Executive Officer shall prepare, or cause to be prepared, a Final EIR. The contents of the Final EIR shall be as required by CEQA or the Guidelines Section 15132.
 - (2) Upon completing the Final EIR, the FEIR shall be submitted to the appropriate decision-making body. The FEIR certification shall be made within one year from date of the application being accepted as complete.
 - (3) The Final EIR is sent to each person or agency commenting on the Draft EIR at least fifteen (15) days prior to public hearing held on the subject project.
 - (4) The review of a Final EIR should focus on the responses to comments on the draft EIR. The "Response to Comments" can be a separate section in the FEIR or a revision to the DEIR.
- (G) Action of the Decision-Making Body:
- (1) The decision-making body shall mean, the LAFCO to the extent that said body has legal authority by ordinance, or state law, to render a final decision. The decision-making body shall, if appropriate, certify that the Final EIR has been completed in compliance with CEQA and the State Guidelines and that the information contained therein has been reviewed and considered in the decision on the project.

- (2) Notwithstanding the above, no public agency shall approve or carry out a project for which an EIR has been completed which identified one or more significant effects of the project unless the public agency makes one or more written findings specified by the Guidelines for each of those significant effects, accompanied by a statement of the facts supporting each finding.
- (3) If the required findings for a "certified" FEIR are made according to PRC, Section 21081(a), and a monitoring and/or reporting program is adopted which includes changes to the project approval, the monitoring/reporting program shall be designed to ensure compliance during project implementation.

(H) Notice of Determination (NOD):

When the LAFCO, has made a final decision concerning a project for which an EIR has been prepared and certified, the Executive Officer shall file, within five (5) working days, a Notice of Determination. The NOD shall be filed with the County Clerk and/or appropriate State Office as required by the Guidelines, and local regulations.

After the 10 day appeal period has passed, projects subject to CEQA, which have an adverse impact on fish and wildlife resources, and for which a "Notice of Determination" has been filed with the County Clerk's Office, a fee may be required made payable to Imperial County if an Environmental Impact Report was prepared and certified by the decision-making body (PRC 21089(b)).

Section 9: EIR PREPARATION UNDER LAFCO CONTRACT

When an EIR is required the following procedures shall be followed;

- (A) The Executive Officer may prepare a Request for Qualifications (RFQ) to be sent out to various consulting firms and establish a listing of qualified consultants from which to chose a consultant. The Executive Officer has the option of sending out a formal or an informal "Request for Proposal" (RFP).

(Formal RFP means an RFP sent to a number of consultants seeking a response for a given project based on the "project description provided. The response will include the full profile of the company, project description, implementation, and cost. This process generally takes between 45 and 75 days.)

(Informal RFP means the Executive Officer can fax a copy of the project description to 3 – 5 qualified consultants and seek only a cost estimate. The Executive Officer can then select from the respondents but is not required to select the lowest bid.)

- (B) The consultant shall provide the Executive Officer, upon request, one copy of a work/contract proposal containing:
 - (1) The personnel to be assigned;
 - (2) Wage scales;
 - (3) Time to complete Draft EIR and Final EIR;
 - (4) Total costs to provide a specified number of Draft EIR's;
 - (5) Total costs to provide a specified number of Final EIR's;
 - (6) Summation of total costs to provide described services in a "not to exceed cost" format; and,
 - (7) Any additional information requested.
- (C) All proposals shall be reviewed and analyzed by the Executive Officer, for the awarding of a contract to a particular bidder.
- (D) The Applicant has thirty (30) days from the date of notification to make payment of the above-described funds. At the end of the thirty (30) days, if the Applicant has not paid said funds, the project application will be closed out and returned to Applicant.
- (E) When the cost of preparing an EIR by LAFCO contract exceeds the Applicant's deposit, the Applicant shall pay the LAFCO the additional sum prior to submission of the EIR to the appropriate decision-making body.
- (F) If the cost of the EIR being prepared is less than the estimated cost and Applicant's deposit, the amount of over payment shall be refunded to the Applicant.
- (G) The environmental documentation developed under Contract by the consultant shall be submitted to the Executive Officer only, for review and approval. (An EIR is a LAFCO document and as such it is to be clear to the Applicant and/or consultant that the selected/approved consultant works for the LAFCO although paid for by the Applicant).
- (H) The Executive Officer shall review the submitted documentation and determine whether it meets all requirements of CEQA and Section 8 of these Rules.

SECTION 10: PUBLIC INSPECTION

All reports or documents filed pursuant to these Rules shall be available for public inspection and copies may be purchased at the rate set by the Executive Officer.

SECTION 11: FEES

All reports or documents filed in pursuant to these Rules shall be subject to the fees authorized by LAFCO.

- (A) When the EIR is prepared by a consultant under contract to the LAFCO, the Applicant shall pay a fee to the LAFCO established by LAFCO.
- (B) Large projects may require the hiring of an independent, third-party consultant acceptable to and directed by the Executive Officer to evaluate the suitability of the environmental documentation submitted. The Executive Officer shall have the discretion to determine when a project would need this LAFCO-retained consultant on a case-by-case basis and be approved by the LAFCO. The cost of this third party consultant shall be borne by the Applicant.

Section 12: LAFCO AS A RESPONSIBLE AGENCY

To assure that the LAFCO is properly involved and responsive to any environmental document being prepared by a "non-LAFCO" agency that is not a "co-lead" may however affect the LAFCO, the following procedures are herewith established:

- (1) The LAFCO Executive Officer shall respond on behalf of LAFCO with or without the approval of the Commission and as such represents the Commission.
- (2) If the Executive Officer determines that a project is a "major project" or a project of "significance" or a "controversial project", the LAFCO Executive Officer may present such a project/response to the LAFCO.
- (3) Any notice for an NOP or request for response to the Executive Officer shall be copied to each Commissioner.