

**Governor's Office of Planning and Research
State Clearinghouse**

CEQA Technical Advisory

Submitting CEQA Documents to the State Clearinghouse

November 15, 2005

This technical advisory is intended to offer CEQA practitioners, particularly at the local level, information about the procedural requirements of the California Environmental Quality Act (CEQA). OPR's technical advisories are part of its public education and training program for planners, developers and others. This advice supplements, but does not amend or revise, the CEQA statute or state CEQA Guidelines.

I. Purpose

Public agencies are responsible for preparing CEQA environmental documents for proposed projects, and making those documents available for public review or posting as a matter of public record. These public agencies are called lead agencies. This advisory is intended to clarify the circumstances under which lead agencies must submit their environmental documents to the State Clearinghouse for state level review.

II. Background

The State Clearinghouse within the Governor's Office of Planning and Research (OPR) is responsible for managing the State's environmental review process under CEQA (Public Resources Code 21000 et seq.). CEQA and the state CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3) require lead agencies to file or submit many types of environmental documents to OPR (the State Clearinghouse) under certain circumstances. These documents include:

- Notices of Exemption (NOE)
- Notices of Preparation (NOP)
- Notices of Completion (NOC)
- Notices of Determination (NOD)
- Draft Environmental Impact Reports (EIR)
- Proposed Negative Declarations and Mitigated Negative Declarations (Neg Dec)

Some lead agencies misunderstand or misinterpret the requirements for submitting CEQA documents to the State Clearinghouse. Procedural errors by lead agencies can needlessly delay a project's review and approval process and may even draw CEQA legal

challenges. The following information is provided to minimize procedural errors by lead agencies and reduce the potential for delays or legal challenges.

III. What to Submit to the Clearinghouse

The following is a brief summary of the circumstances under which CEQA documents must be submitted to the State Clearinghouse. All code references are to the Public Resources Code (PRC) or to the California Code of Regulations (CCR).

Notice of Exemption

When a lead agency determines that a project is exempt from CEQA, the lead agency *may* file a NOE. Filing a NOE is voluntary. If a state agency files a NOE, it must be filed with OPR. If a local agency files a NOE, it must be filed with the County Clerk. (PRC 21108(b) and 21152(b))

Although filing of Notices of Exemption is generally voluntary, the statute requires lead agencies to file their NOEs with the State Clearinghouse for three specific types of housing projects. (PRC 21152.1) These three types of housing projects are identified in PRC 21159.22 for farm worker housing, 21159.23 for low-income housing, and 21159.24 for urban infill housing.

Notice of Preparation

Whenever a lead agency determines that an EIR is required for a project, the lead agency must send a copy of the NOP to all responsible agencies, trustee agencies, and OPR. Copies of *all* NOPS must be sent to OPR. (PRC 21080.4(a))

Notice of Completion

Whenever a lead agency completes a draft EIR, it must file a NOC with OPR which briefly describes the project and the fact that an EIR has been prepared. (PRC 21161)

Notice of Determination

When a lead agency approves a project for which an EIR or Neg Dec was prepared, the lead agency must file a NOD within 5 working days of the project approval. (CCR 15075(a); 15094(a)) When a state agency files a NOD, it must be filed with OPR. (PRC 21108(a)) When a local agency files a NOD, it must be filed with the County. (PRC 21152(a)) Filing of the NOD begins a 30 day statute of limitations on legal challenges. If a NOD is *not* filed, the statute of limitations becomes 180 days, by operation of law. (CCR 15112)

Draft EIRs and Negative Declarations

Lead agencies must submit their Draft EIRs and Neg Decs to the State Clearinghouse when any of the following is true (PRC 21082.1; CCR 15205 and 15206):

- When the lead agency is a state agency.
- When there is a state responsible agency. The definition and role of a responsible agency is discussed in section IV.
- When there is a state trustee agency. The definition and role of a trustee agency is discussed in section IV.
- When the project meets the criteria for “statewide, regional or areawide significance.” A project qualifies as a project of “*statewide, regional, or areawide significance*” if it meets any of the criteria set forth in CCR 15206. These criteria are specific with respect to project size, location, type, and nature of impact. Examples include residential developments with over 500 dwelling units, projects within the Lake Tahoe Basin, and projects that would substantially affect sensitive wildlife habitats such as wetlands.
- When a state agency otherwise has jurisdiction by law with respect to the project.

This means state agencies must submit all of their EIRs and Neg Decs to the State Clearinghouse. Local agencies must submit an EIR or Neg Dec to the State Clearinghouse if (a) the project involves a state responsible or trustee agency, or (b) the project meets certain criteria based on project type, size, or location.

Where any of the above conditions exist (i.e., a state lead agency, a state responsible or trustee agency, or a project with statewide, regional or areawide significance) the EIR or Neg Dec must be submitted to the State Clearinghouse. Please refer to the *State Clearinghouse Handbook* for more information on how to submit your CEQA documents.

IV. Identifying and Working With Responsible and Trustee Agencies

Responsible agencies are those which have discretionary approval power over a project, such as the granting of a permit, lease or other approval, or approval of funding. Responsible agencies may also be involved in carrying out some aspect of the project (CCR 15381). The responsible agency’s power is more limited than that of the lead agency, but it may require changes in a project to lessen or avoid the environmental effects of that part of the project which the responsible agency will be called on to carry out or approve. (CCR 15041(b); 15042; 15096(g)) There are potentially dozens of state responsible agencies having regulatory or funding authority over private and local development projects.

Trustee agencies are state agencies that, while they do not have discretionary approval over a project, have jurisdiction by law over natural resources affected by a project that are held in trust for the people of California. (CCR 15386) There are four trustee

agencies defined in CEQA; the Department of Fish and Game, Department of Parks and Recreation, the State Lands Commission, and the University of California. (CCR 15386) A trustee agency has an important role in the CEQA process. A trustee agency may, for example, propose mitigation measures or project revisions for incorporation into a project and prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. (CCR 15097(f); 15204(f))

An agency is a trustee agency by virtue of its jurisdiction over natural resources affected by a project, not based on the extent of a project's effect on those natural resources. (CCR 15386). For example, an EIR or Neg Dec may conclude that a project has no significant impact on fish and wildlife of the state, yet the Department of Fish and Game would still be a trustee agency for that project if the project affects fish or wildlife. In this example, the Department of Fish and Game, as a trustee agency, would be consulted early in the process to assist in determining whether the project may have a significant impact on fish or wildlife resources and in developing appropriate changes in the project or mitigation measures for such impacts if they are significant.

Lead agencies are required to consult with state responsible and trustee agencies *before* deciding whether a project's impacts are significant. (PRC 21080.3; CCR 15063). This means that responsible and trustee agencies must be consulted *prior* to determining what type of CEQA document to prepare. Lead agencies should not confuse determining whether there is a state responsible or trustee agency with determining whether a project may have a significant impact. These are two separate and independent activities. A lead agency should not independently conclude whether impacts to natural resources are significant, without first consulting with appropriate trustee agencies.

Once an EIR or Neg Dec has been prepared, the lead agency must make the document available to the state responsible and trustee agencies, through the State Clearinghouse process. (CCR 15023(c); 15073(d); 15087(f); 15204(a),(e))

OPR can assist lead agencies to determine whether any state responsible or trustee agencies are involved in a project. (CCR 15023(d))

V. Contact For More Information

For more information on this subject or to review other OPR technical advisories, please contact:

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