

CEQA Projects and Roles of a Lead Agency and a Responsible Agency

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What is a project under CEQA?

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:

- 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.
- 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.
- 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.

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.

What is a Lead Agency?

A “[lead agency](#)” is the public agency that has the principal responsibility for carrying out or approving a [project](#). The lead agency will decide whether a project is subject to the California Environmental Quality Act (CEQA) or is categorically exempt, and if subject to CEQA, whether an Environmental Impact Report ([EIR](#)), Mitigated Negative Declaration ([MND](#)), or Negative Declaration ([ND](#)) will be required for the project. The lead agency is responsible for preparing the appropriate CEQA document. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish.

Criteria for Identifying the Lead Agency

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

- If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.
- If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an

agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

- Where more than one public agency equally meet the criteria, the agency that acts first on the project in question shall be the lead agency.
- Where there are two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

What is a Responsible Agency?

A “[responsible agency](#)” is the public agency which proposes to carry out or approve a project for which a lead agency is preparing or has prepared an [environmental document](#). 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.

Local Enforcement Agency acting as Responsible Agency

Consultation

When acting as a responsible agency, the [local] enforcement agency (EA) will utilize environmental analyses and documentation prepared by the lead agency in its decision-making process. To ensure adequacy of these documents under [CEQA](#), the EA is given the opportunity to affect the scope and contents of the analysis by providing consultation to the lead agency. The EA should designate representatives to attend scoping meetings.

When consultation is requested by the lead agency, the EA should review the notice of early consultation (NOEC) or [notice of preparation](#) (NOP) for the proposed project and provide the lead agency with specific detail about the scope and content of the environmental information. Comments should be related to the EA’s area of statutory authority and expertise. Comments also should be made in order to disclose information necessary for the EA to make their approval over the portion of the project related to the permitting and enforcement of the proposed project. If an EIR is to be prepared and consultation is not requested, the EA can ask for a consultation meeting. The EA must respond to an NOP within 30 days.

Providing Comments

As a responsible agency, the EA has an additional opportunity to affect the quality of the analysis provided in an environmental document by reviewing and commenting on proposed or draft documents.

When a MND or ND is being prepared, the EA can comment on the proposed document. Comments need to be returned to the lead agency within the indicated review period. MNDs and NDs do not require the lead agency to respond to comments.

Therefore, if the EA disagrees with the level of detail necessary for the processing of a solid waste facility permit, the EA must indicate where the document is deficient and offer inclusions to be incorporated/amended into the final document. If the EA disagrees with the proposal to prepare a MND or ND, the significant effects which would result from the project must be identified and a recommendation made to modify the project, incorporate mitigation measures, or prepare an EIR.

If an EIR is being prepared, the EA should respond within the indicated review period. Comments should speak to the scope and content of the EIR germane to the EA's responsibilities. Comments on a draft EIR should focus on the completeness of the project description and proposed project alternatives, as well as the completeness, inconsistencies and/or correctness of the environmental analysis and technical appendices in the EIR. The comments should offer additional information, mitigation measures or alternatives that should be included. The comments need to be limited to those project activities which are within the agency's expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency.

Use of a Lead Agency's Document(s)

The EA shall consider the lead agency's EIR, MND or ND prior to acting upon or approving the project. The responsible agency shall certify that it reviewed and considered the information contained in the EIR, MND or ND.

If the EA finds the document prepared by the lead agency is inadequate for its use as a responsible agency, the EA must either:

- Take the issue to court within 30 days if a [notice of determination](#) has been filed;
- Be deemed to have waived any objection to the adequacy of the EIR, MND, or ND;
- Prepare a subsequent EIR, ND, MND if permitted under [14 CCR Section 15162](#); or
- Assume the lead agency role as provided 14 CCR Sections [15052\(a\)\(3\)](#) and [15096\(e\)](#).

If the document is deemed to be adequate, the EA must consider the environmental effects of the project as shown in the EIR, ND or MND prior to making a decision on the project. [14 CCR Section 15096\(f\)](#)

If an EIR was developed, the EA shall not approve a project as proposed if any feasible alternative or feasible mitigation measures within its powers would substantially lessen or avoid any significant effect. [14 CCR section 15096\(g\)](#)

The EA needs to make the written findings as required by [14 CCR Sections 15091, 15093, 15096\(h\)](#).

After the EA approves the project by issuing a permit, a notice of determination may be filed with the County Clerk and the [State Clearinghouse](#).

What is a Trustee Agency?

A “[trustee agency](#)” is a public 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:

- 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 to game refuges, ecological reserves, and other areas administered by the department.
- The State Lands Commission with regard to state-owned “sovereign” lands, such as the beds of navigable waters and state school lands.
- The State Department of Parks and Recreation with regard to units of the State Park System.
- The University of California with regard to sites within the Natural Land and Water Reserves System.

Authority Provided by CEQA

CEQA is to be used in conjunction with discretionary powers granted to state and local public agencies by other laws. Where another law grants an agency discretionary powers, [CEQA](#) supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid [significant effects on the environment](#) when it is feasible to do so with respect to projects subject to the powers of the agency.

The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power. The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

Public Agencies’ Duty to Minimize Environmental Damage

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible. In regulating public or private activities, agencies are required to consider preventing environmental damage. A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that a project proposal would have on the environment. The duty to prevent or minimize environmental damage is implemented through the [findings](#) required by CEQA.

CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including

economic, environmental, and social factors and, in particular, the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations ([14 CCR Section 15093](#)) to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

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