



CEQA Portal Topic Paper

Lead Agency, Responsible Agencies, and Trustee Agencies

Introduction

CEQA applies to all California public agencies that carry out or approve projects. When the legislature enacted CEQA and the Natural Resources Agency adopted the State CEQA Guidelines, they both recognized that some projects are carried out or approved by more than one agency. Therefore, both CEQA and the State CEQA Guidelines define several different categories of agencies and give differing roles and responsibilities to each. One key to successful CEQA compliance is for the various agencies involved in a project to figure out their respective roles at the beginning of a project. This is particularly important because for most projects only one CEQA document is prepared by the Lead Agency, and it must be used by all of the agencies carrying out or approving the project. This topic paper describes the various categories of agencies and explains their respective roles and responsibilities in the environmental review process set forth by CEQA.

What Is a Lead Agency?

The Lead Agency, as defined by CEQA, is the public agency that has the primary responsibility for carrying out or approving a project. (State CEQA Guidelines Section 15367.) To be a CEQA Lead Agency, the public agency must have discretionary authority over the proposed project (see also *CEQA Triggers* Topic Paper). The Lead Agency also has the primary responsibility for determining what level of CEQA review is required for a project and for preparing and approving the appropriate document [e.g., negative declaration (ND), mitigated negative declaration (MND), or Environmental Impact Report (EIR)]. Id. More information is provided below under *Who Can Serve as a Lead Agency?* and *What Is the Role of the Lead Agency.*

What Is a Responsible Agency?

A Responsible Agency under CEQA is a public agency with some discretionary authority over a project or a portion of it, but which has not been designated the Lead Agency. (State CEQA Guidelines Section 15381.) So, if a project involves discretionary actions by more than one agency, one may be selected as the Lead Agency pursuant to State CEQA Guidelines Section 15051, and the others would become Responsible Agencies.



Because Responsible Agencies will take discretionary actions regarding a project, they are also required to comply with CEQA. For efficiency, CEQA allows Responsible Agencies to rely on a CEQA document prepared by the Lead Agency to meet their CEQA compliance requirements. However, Responsible Agencies must independently review and approve the CEQA document, and not rely automatically on the Lead Agency's judgments. According to CEQA, a Responsible Agency complies with CEQA "by considering the EIR or negative declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved" (State CEQA Guidelines Section 15096(a)).

What Is a Trustee Agency?

A Trustee Agency is a State agency having jurisdiction by law over natural resources that are held in trust for the people of California, and which may be affected by a project (State CEQA Guidelines Section 15386). A Trustee Agency may also be a Responsible Agency if it has discretionary authority over a project.

CEQA only identifies four Trustee Agencies: the California Department of Fish and Wildlife (CDFW); the State Lands Commission (SLC); the State Department of Parks and Recreation (State Parks); and the University of California (UC) (State CEQA Guidelines Section 15386(a-d)).

CDFW is a Trustee Agency for projects that involve or could have an effect on the fish and wildlife resources of the State, including designated rare or endangered native plants, game refuges, ecological reserves, and other areas it administers. SLC is a Trustee Agency for projects that involve State-owned sovereign lands such as the beds of navigable waters and State school lands. State Parks is a Trustee Agency for projects that involve or may have an effect on a property within the State Park System. UC is a Trustee Agency for projects that involve or may affect the Natural Land and Water Reserves System.

Who Can Serve as a Lead Agency?

CEQA compliance is required for discretionary projects to be carried out or approved by California "public agencies," including any State agency, board, or commission, as well as any Local Agency.

The California Public Resources Code (PRC) states that CEQA applies to public agencies (PRC Section 21080(a)), and defines public agency to include "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision" (PRC Section 21063 [emphasis added]).

The State CEQA Guidelines define state agency as "a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury." (State CEQA Guidelines Section 15383).



A *Local Agency* is defined under the CEQA statute as “any public agency other than a state agency, board, or commission” (PRC Section 21062). Therefore, under CEQA a county, city, combined city and county (such as San Francisco), regional agency, public district, redevelopment agency, or other public subdivision, is a Local Agency. Under PRC Section 21062, redevelopment agencies and Local Agency Formation Commissions (LAFCOs) are considered local agencies.

For purposes of CEQA, a “public agency” does not include the following:

- The State Legislature
- The Governor and executive offices of the Governor (see *Pertinent Court Cases* below)
- California state courts (State CEQA Guidelines Section 15379)
- The electorate (see *Pertinent Court Cases* below)
- Any agency of the federal government (State CEQA Guidelines Section 15379)

How Is a Lead Agency Selected?

In many cases, the choice of a CEQA Lead Agency is simple. For example if a public agency is carrying out its own project, it will typically be the Lead Agency for the project. Also, if only one public agency has discretionary authority over a project, it will be the Lead Agency. However, there are also circumstances when more than one public agency may have a substantial claim to be the Lead Agency. In those situations, CEQA provides that the Lead Agency is “the public agency which has the principal responsibility for carrying out or approving a project,” which may be subject to CEQA (PRC Section 21067).

State CEQA Guidelines Section 15051 refines the statutory language and sets forth additional criteria for identifying the Lead Agency. For example, for private projects the Lead Agency should normally be the agency “with general governmental powers” such as a city or county, as opposed to a single- or limited-purpose agency such as a school district, water district, or air pollution control district. Limited-purpose state agencies, such as the State Water Resources Control Board of the Department of Fish and Wildlife typically serve as Responsible Agencies when a local government is the Lead Agency (State CEQA Guidelines Section 15051(b)(1)). Where two or more public agencies have equal responsibility over a project as a whole, the first agency to act on the project would normally be the Lead Agency (State CEQA Guidelines Section 15051(c)).

Where more than one public agency has discretionary authority over a project and each has a substantial claim to be the Lead Agency, the two agencies may meet to decide which should be the Lead Agency (State CEQA Guidelines Section 15051(d)). Any agreement regarding selection of the Lead Agency must adhere to the guidelines criteria. Thus, for example, if several agencies assign Lead Agency status to an agency that does not meet the criteria for being a Lead Agency, a court may set aside the choice and declare the CEQA document prepared by the wrong agency to be inadequate.

If two or more public agencies are unable to agree which agency should be the Lead Agency, any of the disputing agencies, or the project applicant (in the case of a private project), may request the Governor's Office of Planning and Research (OPR) to decide (PRC Section 21165(a); State CEQA Guidelines Section 15053). OPR will then designate the Lead Agency within 21 days. If there is no dispute regarding the choice of the Lead Agency, OPR does not have a role in designating the Lead Agency. (PRC Section 21165(b)). Formal requests for OPR to designate a Lead Agency are quite rare. However, OPR is often asked to assist agencies in selecting the correct Lead Agency.

What Is the Role of the Lead Agency?

Completing CEQA Review

The Lead Agency has primary responsibility for completing CEQA Review for a proposed project. This includes the determination as to what type of CEQA compliance document is required (e.g., Notice of Exemption, IS/ND, IS/MND, or EIR), as well as for overseeing the completion of the appropriate document, either directly with its staff or by hiring a third party (such as a consulting firm). However, even if an agency hires a third party to prepare a document, the document's compliance with CEQA remains the ultimate responsibility of the Lead Agency, and it is responsible for ensuring that any documents prepared meet the content- and process-related requirements of CEQA.

In general, with respect to the content-related requirements, the Lead Agency must ensure that the document evaluates all required resource topics, contains an adequate range of alternatives, and includes appropriate mitigation measures for any significant impacts. Additionally, the Lead Agency must exercise its independent judgment as to the significance of all impacts, based on scientific and factual data (State CEQA Guidelines Section 15064(b)), and it must select and adopt mitigation measures to reduce significant impacts to less-than-significant levels, where feasible (State CEQA Guidelines Section 15126.4).

When an EIR is prepared, the Lead Agency must "certify" that the document meets all of the requirements of CEQA, has been presented to the decision-making body that has considered it, and that it reflects Lead Agency's independent judgment. (State CEQA Guidelines Section 15090.) Where an EIR identifies one or more significant environmental effects, the Lead Agency must make findings for each effect that documents the efforts of the Lead Agency to mitigate these impacts, or explain why mitigation to a less-than-significant level is not feasible. (State CEQA Guidelines Section 15091.) The findings establish the analytical link between the CEQA document and a decision derived from the documentation. When significant impacts remain, the Lead Agency must also adopt a Statement of Overriding Considerations, which documents the ultimate balancing of the merits of approving a project against its environmental damage (State CEQA Guidelines Section 15093).

Similarly, when an ND or MND is prepared instead of an EIR, the Lead Agency must consider and adopt the ND before making a decision on a project (State CEQA Guidelines Section 15074).

A Lead Agency is also responsible for complying with all of the process-related aspects of CEQA, including the preparation and filing of all required notices, conducting all required public outreach activities, and the distribution of documents. Finally, the Lead Agency has a responsibility to consult with Responsible and Trustee Agencies, as described below.

Coordination with Responsible and Trustee Agencies

The Lead Agency's decision whether to prepare an ND, MND, or an EIR is binding on all Responsible and Trustee Agencies, except in unusual circumstances (PRC Section 21080.1(a); State CEQA Guidelines Section 15050(c)). Therefore, a Lead Agency is required to consult with and involve all Responsible and Trustee Agencies throughout the CEQA process. First, the Lead Agency must consult with Responsible and Trustee Agencies prior to determining whether a negative declaration or an EIR is required for a project (PRC Section 21080.3(a); State CEQA Guidelines Section 15063(g)). If a Lead Agency determines an EIR is required for a project, the Lead Agency must send a Notice of Preparation to all Responsible and Trustee Agencies, who will then specify to the Lead Agency "the scope and content of the environmental information that is germane to the statutory responsibilities" of that agency in connection with the proposed project and which must be included in the EIR (PRC Section 21080.4; State CEQA Guidelines Section 15082(b)).

Next, the Lead Agency must send every Responsible and Trustee Agency a Notice of Preparation (NOP) prior to undertaking an EIR (PRC Section 21092; State CEQA Guidelines Section 15082(a)). Within 30 days of receiving the NOP, each Responsible and Trustee Agency and OPR must provide the Lead Agency with detail about the scope and content of the environmental information related to the agency's area of statutory responsibility to be included in the draft EIR. (Pub. Res. Code § 21080.4(a); State CEQA Guidelines Section 15082(b).) Prior to completing an EIR, the Lead Agency must again consult with and invite comments from all Responsible and Trustee Agencies (PRC Sections 21104(a), 21153(a); State CEQA Guidelines Section 15086). If a Lead Agency intends to adopt an ND or MND, the Lead Agency must send a Notice of Intent (NOI) to every Responsible and Trustee Agency (State CEQA Guidelines Section 15073(c)).

In addition to reaching out to Responsible and Trustee Agencies, other agencies that a Lead Agency must consult and request comments from include:

- Any other state, federal, or local agency that has jurisdiction by law with respect to the project or that exercises authority over resources which may be affected by the project (PRC Sections 21104(a), 21153(a); State CEQA Guidelines Section 15086(a)(3)); and
- Every city or county bordering the city or county within which the project is located (State CEQA Guidelines Section 15086(a)(4).)

Lead Agencies may also have special consultation requirements with other agencies in very specific situations—for example, when certain categories of large projects would affect water

supplies, the Lead Agency has certain obligations to consult with the agency that would provide water to the project (State CEQA Guidelines Section 15086(a)(3)).) Similarly, for a subdivision project within one mile of a State Water Resources Development System facility, a Lead Agency preparing an EIR must consult with Department of Water Resources (State CEQA Guidelines Section 15086(a)(7)).) For projects of “statewide, regional, or area-wide significance” (State CEQA Guidelines Section 15206(b)), a Lead Agency must consult with transportation planning agencies and public agencies that have transportation facilities (including public transit agencies, if they have facilities within ½ mile of the project) within their jurisdictions that could be affected by the project (State CEQA Guidelines Section 15086(a)(5)).

What Is the Role of a Responsible Agency?

In response to consultation, a Responsible Agency must explain its reasons for recommending whether the Lead Agency should prepare an EIR or an ND (or MND) for the project (State CEQA Guidelines Section 15096(b)(1)). After receiving a NOP from a Lead Agency, the Responsible Agency must send a reply specifying “the scope and content of the environmental information which would be germane to the Responsible Agency’s statutory responsibilities in connection with the proposed project.” (State CEQA Guidelines Section 15096(b)(2).)

A Responsible Agency should review and comment on draft EIRs, NDs, and MNDs for projects which involve activities “within the agency’s area of 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.” (State CEQA Guidelines Section 15096(b)(3).) If it determines that the Lead Agency’s final document is not adequate for its use, a Responsible Agency has limited options. It may:

- Bring a legal challenge against the adequacy of a final EIR, ND, or MND prepared by the Lead Agency;
- Waive its objections and use the Lead Agency’s document anyway; or
- Under certain circumstances, assume the role of Lead Agency and prepare its own CEQA document.

In any of these situations, the Responsible Agency may not act on a project without having a completed and approved CEQA document on which to base its decision. However, if the Responsible Agency finds the ND, MND, or EIR prepared by the Lead Agency is sufficient, it may rely on that document before reaching a decision on the project. (State CEQA Guidelines Section 15096(f).) A Responsible Agency has responsibility for mitigating or avoiding direct or indirect environmental effects of the parts of the project that it decides to carry out, finance, or approve. (State CEQA Guidelines Section 15096(g)(1).) A Responsible Agency may also have to prepare and adopt findings (State CEQA Guidelines Section 15096 (h)) for decisions that it makes regarding the mitigation of environmental impacts. Finally, after making its decision on a project, a Responsible Agency must file a notice of determination (“NOD”) in the same manner as a Lead Agency under State CEQA Guidelines Sections 15075 or 15094 (State CEQA Guidelines Section 15096(i).)

What Is the Role of a Trustee Agency?

Although a Trustee Agency does not have approval authority over a project, it is nevertheless an important player in the CEQA process. The role of Trustee Agencies focuses on ensuring that Lead and Responsible Agencies take into consideration those natural resources under their jurisdiction, and which are held in trust for the people of the state. This responsibility is exercised through consultation with the Lead Agency regarding the type of document to prepare (State CEQA Guidelines Section 15063(g)), recommendations to the Lead Agency about the scope and content of information related to the Trustee's area of responsibility that must be included in the Draft EIR (State CEQA Guidelines Section 15082(b)), and submission of comments on the CEQA document prepared by the Lead Agency. (State CEQA Guidelines Section 15204(d).) If a Trustee Agency also has permitting authority over a project its role in the CEQA process is that of Responsible Agency for that project. In these situations it must follow all of the procedures discussed above for a Responsible Agency

Lead Agencies and Participating Agencies in a Joint CEQA/NEPA Document

In California, some projects that are subject to CEQA are also subject to the National Environmental Policy Act (NEPA). This occurs when a state or local project will have federal agency involvement because of any of the following circumstances:

- The project is jointly carried out by a local or state agency and a federal agency
- The project requires federal permits or other entitlements
- The project receives federal funds
- The project will occur on federal land or will require a lease or right-of-way from a federal agency

In those situations, both the State CEQA Guidelines (State CEQA Guidelines Section 15006(j)) and the White House Council on Environmental Quality (CEQ) NEPA regulations (40 CFR 1506.2) encourage the state and federal Lead Agencies to cooperate and prepare joint NEPA/CEQA documents. Although CEQA typically allows only a single Lead Agency for a given project, a CEQA Lead Agency may serve as a joint Lead Agency with a federal agency when a joint document is prepared.

Over the years, many joint CEQA/NEPA documents have been successfully prepared; however, the preparation of joint documents is often a complicated undertaking. Recognizing this, in 2014, the Governor's Office of Planning and Research (OPR) and the CEQ issued their first-ever joint guidance entitled *NEPA and CEQA: Integrating Federal and State Environmental Reviews* (Council on Environmental Quality, Governor's Office of Planning and Research 2014).

OPR's guidance document is intended to assist state and federal agencies when a joint CEQA/NEPA document is to be prepared, and there is both a NEPA and a CEQA Lead Agency. The guidance covers a broad variety of topics related to integrating CEQA and NEPA such as: when is each law triggered, differences in terminology; how to integrate the two laws;



preparing a joint CEQA/NEPA document; and how federal and state agencies make their respective decisions using a joint document. It also includes a sample Memorandum of Understanding that the federal and state Lead Agencies can use to reach agreement on preparing and using a joint document.

Areas of Controversy Regarding Lead Agencies

A key area of controversy regarding public agencies and CEQA (as highlighted further below in under *Pertinent Court Cases*) is the selection of the Lead Agency.

The State CEQA Guidelines provide guidance on how the Lead Agency should be selected in case two or more public agencies dispute which agency should serve as the Lead Agency (see *How Is a Lead Agency Selected?* above). As previously mentioned, the public agency that has “primary responsibility for carrying out or approving a project” generally should serve as the

Lead Agency. Furthermore, State CEQA Guidelines Section 15051 provides additional guidance for determining the Lead Agency.

A brief review of relevant cases, discussed in the section below, may provide additional guidance in determining the Lead Agency in the event that the regulatory guidance does not provide absolute clarity in a given situation. See *Pertinent Court Cases* below for additional detail and case citations.

For example, the public agency with the greatest responsibility for undertaking a project likely is the Lead Agency, despite the fact that another public agency may have a mandatory obligation to facilitate the former agency’s actions. (See *Planning and Conservation League v. Castaic Lake Water Agency* (2009).)

However, a public agency may not delegate its role as Lead Agency to another public agency that has a great interest in a project, when the former agency has near-plenary statutory or regulatory jurisdictional responsibility for that project. (See *Planning and Conservation League v. Dept. of Water Resources* (2000).)

Finally, a public agency with the authority to merely operate or manage a project is not necessarily the Lead Agency if another public agency has the legal authority for approving the project. (See *Friends of Cuyamaca Valley v. Lake Cuyamaca Rec. & Park Dist.* (1994).)

Important Cases

The following published cases involve issues related to CEQA Lead, Responsible, and Trustee Agencies:

Lead Agency Cases

- *Center for Biological Diversity v. County of San Bernardino (May 10, 2015) 247 Cal.App.4th 326*

Selected language verbatim from the Appellate Court Case:

A proposed project to pump fresh groundwater from an underground aquifer located below real property owned by Cadiz, Inc. (Cadiz), in the Mojave Desert (the Project) spawned six related cases. The Project is a public/private partnership, the purposes of which are to prevent waste of the water in the aquifer, and to ultimately transport the water to customers in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties...

The named respondents were the Santa Margarita Water District (Santa Margarita) as the lead agency for the Project; the Board of Directors of the Santa Margarita Water District; the County of San Bernardino, a responsible agency for the Project (the County); and the Board of Supervisors of the County of San Bernardino...

First, Appellants contend that Santa Margarita was improperly designated as the lead agency for the Project, and that this error so tainted the environmental review process that such designation requires preparation of a new environmental impact report (EIR). We disagree. Santa Margarita was properly designated as the lead agency because it is jointly carrying out the Project with the property owner, Cadiz, and because it is the agency with the principal authority for approving and supervising the Project as a whole. Because we find no error in the designation of Santa Margarita as the lead agency, we need not address the issue of prejudice.

- *Picayune Rancheria of Chukchansi Indians v. Brown (2014) 229 Cal.App.4th 1416, 1430*

In this case the Third District Court of Appeal addressed the question of whether the Governor of California is a “public agency” subject to CEQA. The appellate court held that neither the Governor nor the Governor’s Office is a public agency and, therefore, is not subject to CEQA. Thus, the Governor does not serve as a Lead Agency.

- *Habitat and Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277*

In this case, the city acted as the lead agency by agreement with LAFCO. The Sixth District Court of Appeal upheld as proper the designation of a city as the Lead Agency in a municipal services boundary expansion where the city was the entity proposing the sphere of influence (SOI) amendment and providing the services to a university campus, if approved by LAFCO. LAFCO remained the responsible agency because it was responsible for making a decision on the proposed SOI amendment and the request for extraterritorial services.

- *Planning and Conservation League v. Castaic Lake Water Agency (2009) 180 Cal.App.4th 210, 239*

In this case the Second District Court of Appeal held that a local water agency, not the Department of Water Resources (DWR) was the proper Lead Agency to implement a local water transfer because the local water agency had the responsibility to determine the water needs of its service area and to obtain the necessary water for those needs. By contrast,

DWR was obliged by statute to facilitate such transfers. Thus, because the Castaic Lake Water Agency shouldered the primary responsibility for creating and implementing the water transfer in question, it was the proper Lead Agency.

- *Sierra Club v. West Side Irrigation District* (2005) 128 Cal.App.4th 690

In this case the Third District Court of Appeal upheld an agreement between two separate irrigation districts and the City of Tracy regarding Lead and Responsible Agency roles. Under the agreement, the districts assigned to the city their right to collect water from the Central Valley Project, which the city would access through its own turnout on a canal. The agreement was contingent in part upon the districts' compliance with CEQA. The parties agreed the irrigation districts would serve as Lead Agencies to assign the water rights to the city, and the city would act as a Responsible Agency. The court stated that both the districts and the city were qualified to serve as Lead Agency, and that in such situations, CEQA permits either agency to assume that role.

- *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892, 906

In this case the Third District Court of Appeal held that the State Department of Water Resources (DWR) improperly allowed a joint powers water agency to act as Lead Agency for implementation of an agreement to negotiate and execute amendments to existing contracts between DWR and multiple contracting agencies, a project over which DWR had statutory responsibility to build, manage, and operate.

- *Friends of Cuyamaca Valley v. Lake Cuyamaca Rec. & Park Dist.* (1994) 28 Cal.App.4th 419, 427

In this case the Fourth District Court of Appeal held that CDFW, not a local recreation and park district, had the authority and responsibility under CEQA to act as Lead Agency in approving the annual duck season, as CDFW by regulation sets the hunting season schedule, adopts governing regulations, and issues licenses, whereas the local district by agreement with CDFW is simply obligated to operate and manage the hunting season.

Responsible and Trustee Agency Cases

- *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492-93

In this case the Third District Court of Appeal held that a County's failure to send a copy of the mitigated negative declaration to CDFW as Trustee Agency deprived the County of information necessary to informed decision-making and informed public participation, and thus constituted prejudicial abuse of discretion.

- *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1389

In this case, the Fourth District Court of Appeal held that the city was not required to send a copy of the proposed negative declaration to the US Fish & Wildlife Service because it is a federal agency. The court reasoned that only a state agency specified in State CEQA Guidelines section 15386 is considered to be a Trustee Agency under CEQA.



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Sources

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