

TECHNICAL ADVISORY

SUBMITTING CEQA DOCUMENTS TO THE STATE
CLEARINGHOUSE UNDER AB 819



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This technical advisory is one in a series of advisories provided by the Governor’s Office of Planning and Research (OPR) as a service to professional planners, land use officials, and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California. This document is a non-binding guidance and does not alter lead agency discretion in preparing environmental documents subject to CEQA. Nothing in this document should be construed as legal advice.

I. Purpose

Effective January 1, 2022, Assembly Bill [\(AB\) 819](#) (Levine)¹ will require electronic filing of specified environmental documents and notices to the Office of Planning and Research (OPR). The purpose of this technical advisory is to help CEQA practitioners comply with these new procedural requirements as well as existing requirements.

II. Background

The State Clearinghouse (SCH) within OPR is responsible for managing the State’s environmental review process under CEQA.² Under certain circumstances, CEQA and the CEQA Guidelines require lead agencies to file or submit many types of notices and environmental documents to OPR via the SCH.³ These include:

- i) Notices of Exemption (NOE)
- ii) Notices of Preparation (NOP) of a Draft Environmental Impact Report (DEIR)
- iii) Notices of Completion (NOC) & Environmental Document Transmittal
- iv) Notices of Determination (NOD)
- v) Draft Environmental Impact Report (DEIR)
- vi) Proposed Negative Declaration and Mitigated Negative Declaration (Neg Dec and MND)
- vii) Other Environmental Documents (e.g., a Sustainable Communities Environmental Assessment (SCEA))

If lead agencies do not comply with CEQA’s procedural requirements for filing with the SCH, this can needlessly delay a project’s review and approval process. In certain circumstances, the error may also provide the basis for a CEQA lawsuit challenging the project.

III. What to Submit to the State Clearinghouse

The following is a summary of the circumstances under which CEQA documents must be submitted to the SCH. All references are to the [Public Resources Code \(PRC\) § 21000](#) or to the [CEQA Guidelines § 15000-15387](#).

¹ [Assembly Bill \(AB\) 819 \(Levine, 2021\)](#)

² [Public Resources Code \(PRC\) § 21000](#) et seq.

³ [CEQA Guidelines § 15206](#)

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, but many agencies choose to file a NOE because it shortens the statute of limitations. If a State agency files a NOE, it must be filed with the SCH; if a local agency files a NOE, it must be filed with the County Clerk.⁴

Although filing a NOE is generally voluntary, some statutory exemptions require lead agencies to file a NOE with the SCH. For example, when the statutory exemptions contained in PRC Sections [21159.22](#), [21159.23](#), or [21159.24](#) are used, a NOE must be filed pursuant to PRC Section [21152.1](#). Check the language of the statutory exemption to see if a NOE is required.

What's New

Pursuant to AB 819, the SCH must make NOEs available for public inspection on the SCH's website.⁵ State agencies must file their NOEs electronically with the SCH.⁶

Notice of Preparation

Whenever a lead agency determines that a DEIR is required for a project, the lead agency must send a copy of the NOP to all responsible agencies and trustee agencies, file with the county clerk of each county in which the project will be located, and file with the SCH. Copies of *all* NOPs must be sent to the SCH.⁷

What's New

Pursuant to AB 819, lead agencies must submit NOPs electronically to the SCH and must also post the NOPs on its website.⁸

Notice of Completion

Whenever a lead agency completes a DEIR, it must file a NOC with the SCH; the NOC briefly describes the project and states that a DEIR has been prepared.⁹

The NOC also accompanies all environmental documents circulated through the SCH.¹⁰

What's New

Pursuant to AB 819, all NOCs must be submitted to the SCH electronically.¹¹

⁴ Public Resources Code (PRC) § [21108\(b\)](#) and [21152\(b\)](#)

⁵ [Public Resources Code \(PRC\) § 21108\(c\)](#)

⁶ [Public Resources Code \(PRC\) § 21108\(d\)](#)

⁷ [Public Resources Code \(PRC\) § 21080.4\(a\)](#)

⁸ [Public Resources Code \(PRC\) § 21082.1 \(c\)\(d\)](#)

⁹ [Public Resources Code \(PRC\) § 21161](#)

¹⁰ [CEQA Guidelines § 15023](#)

¹¹ [Public Resources Code \(PRC\) § 21161](#).

Notice of Determination

When a lead agency approves a project for which a DEIR or Neg Dec (or other Environmental Document) was prepared, the lead agency must file a NOD within 5 working days of the project approval.¹²

State agencies must file their NOD with the SCH.¹³ Local agencies must file their NOD with the County Clerk.¹⁴ If the project requires discretionary approval from any State agency, the local lead agency shall also, within five working days of this approval, file a copy of the NOD with the SCH.¹⁵ 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.¹⁶

What's New

Pursuant to AB 819, the NOD must be posted on the SCH's website. Additionally, State agencies must file their NODs electronically with the SCH.¹⁷

Draft Environmental Impact Reports and Negative Declarations (or Other Environmental Documents)

Prior to January 1, 2022, lead agencies must submit their DEIRs, Neg Decs, MNDs, and other environmental documents to the SCH when any of the following is true:

- i) When the lead agency is a State agency;
- ii) When there is a State responsible agency. The definition and role of a responsible agency is discussed in Section IV;
- iii) When there is a State trustee agency. The definition and role of a trustee agency is discussed in Section IV;
- iv) When the project meets the criteria for "statewide, regional, or areawide significance;" or
- v) When a State agency otherwise has jurisdiction by law with respect to the project.¹⁸

Please refer to the [State Clearinghouse Website](#) for more information on how to submit your CEQA documents.

What's New

Pursuant to AB 819, CEQA requires a lead agency to submit to the SCH all DEIRs, proposed Neg Decs, and proposed MNDs regardless of whether any of the previous requirements are met.

¹² CEQA Guidelines § [15075\(a\)](#); [15094\(a\)](#); [15096\(i\)](#)

¹³ [Public Resources Code \(PRC\) § 21108\(a\)](#)

¹⁴ [Public Resources Code \(PRC\) § 21152\(a\)](#)

¹⁵ CEQA Guidelines [15075\(d\)](#) and [15094\(d\)](#)

¹⁶ [CEQA Guidelines § 15112](#)

¹⁷ [Public Resources Code \(PRC\) § 21108\(c\) and 21108\(d\)](#)

¹⁸ [Public Resources Code \(PRC\) § 21082.1](#); CEQA Guidelines § [15205](#) and [15206](#)

The lead agency must submit these documents to the SCH in electronic form and the SCH must post those documents on its website.¹⁹

The required review periods of proposed draft environmental documents remain the same in practice, but the language has been amended to account for the changed submission requirements. The review periods are now determined by the following (rather than whether the document was submitted to the SCH):

| Public Review Periods | Draft Neg Dec or MND | Draft EIR |
|--|-----------------------------|-----------------------|
| Default | Not less than 20 days | Not less than 30 days |
| Project where: | Not less than 30 days | Not less than 45 days |
| <ul style="list-style-type: none"> I. A State agency is the lead agency, a responsible agency, or a trustee agency; II. A State agency otherwise has jurisdiction by law with respect to the project; or III. The proposed project is of sufficient statewide, regional, or areawide significance | | |

IV. Identifying and Working with Responsible and Trustee Agencies

Responsible 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.²⁰ 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.²¹ There are potentially

¹⁹ [Public Resources Code \(PRC\) § 21082.1\(c\)\(4\)](#)

²⁰ [CEQA Guidelines § 15381](#)

²¹ CEQA Guidelines § [15041\(b\)](#); [15042](#); [15096\(g\)](#)

dozens of State responsible agencies having regulatory or funding authority over private and local development projects.

Trustee Agencies

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. There are four trustee agencies defined in CEQA²²:

- i. Department of Fish and Wildlife (formally Department of Fish and Game)
- ii. Department of Parks and Recreation
- iii. State Lands Commission
- iv. University of California

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.²³

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.²⁴ For example, a DEIR 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 Wildlife would still be a trustee agency for that project if the project affects fish or wildlife. In this example, the Department of Fish and Wildlife, 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.

Consultation Requirements

Lead agencies are required to consult with State responsible and trustee agencies before deciding whether a project's impacts are significant.²⁵ 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.

All lead agencies should be aware of changes that may also occur regarding the status of responsible and trustee agencies. These changes could include a [Species Act](#) (e.g., CESA), local tree protection ordinances, or other laws that affect listed species.

²² [CEQA Guidelines § 15386](#)

²³ CEQA Guidelines § [15097\(f\)](#); [15204\(f\)](#)

²⁴ [CEQA Guidelines § 15386](#)

²⁵ [Public Resources Code \(PRC\) § 21080.3](#); [CEQA Guidelines § 15063](#)

Once a DEIR or Neg Dec (or other environmental document) has been prepared, the lead agency must make the document available to the State responsible and trustee agencies through the SCH process.²⁶

The SCH can assist lead agencies to determine whether any State responsible or trustee agencies are involved in a project.²⁷

V. Contact for More Information

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

State Clearinghouse
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
Telephone: (916) 445-0613
Website: <https://opr.ca.gov/>
Email: state.clearinghouse@opr.ca.gov

VI. Bibliography of Resources

Assembly Bill No. 819 (Jul. 16, 2021)
<https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB819>

Public Resources Code § 21000 et seq.
<<https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=PRC&tocTitle=+Public+Resources+Code+-+PRC>> (as of Nov. 18, 2021)

CEQA Guidelines § 15000 -15387
<<https://govt.westlaw.com/calregs/Index?transitionType=Default&contextData=%28sc.Default%29>> (as of Nov. 18, 2021)

²⁶ CEQA Guidelines § [15023\(c\)](#); [15073\(d\)](#); [15087\(f\)](#); [15204\(a\)\(e\)](#)

²⁷ [CEQA Guidelines § 15023\(d\)](#)