

Department of Toxic Substances Control
Public Participation Manual

CHAPTER 5
PUBLIC PARTICIPATION DURING CEQA

Chapter 5 ♦ Public Participation During CEQA

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Public Participation During CEQA

Overview

The California Environmental Quality Act (CEQA) was signed into law in 1970 (Public Resources Code; § 21000 et seq). Among its provisions, CEQA requires public agencies carrying-out or approving a project to conduct an environmental analysis to determine if project impacts could have a significant effect on the environment. Typically, the agency having principal authority over a project is the entity responsible for conducting the environmental analysis. Such agencies are referred to as *Lead Agencies*. As a public agency, DTSC is subject to the requirements of CEQA. The Office of Environmental Analysis, Regulation & Audits (OEARA) is responsible for review and approval of CEQA documents prepared by programs, and for providing overall CEQA technical guidance and policy direction within DTSC. (Refer to Document #EO-93-001-PP entitled *Department Compliance with the Requirements of CEQA*, July 1993).

Public participation is a mandated and essential component of CEQA. In a 1986 court case, it was emphasized that “... the public holds a ‘privileged position’ in the CEQA process ‘based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision making’.” (1992 State CEQA Guidelines, Section 15201). Refer to “CEQA Requirements and Processes” for a complete listing of the public participation requirements under CEQA.

All proposed projects for which the DTSC has discretionary decision-making authority are subject to CEQA if they potentially impact the environment. DTSC approval actions which require CEQA review and documentation include, but are not limited to:

- ◆ Remedial Action Plans
- ◆ Interim Remedial Measures
- ◆ Removal Action Workplans
- ◆ Pilot Studies
- ◆ Corrective Action
- ◆ Facility Permit Determinations
- ◆ Facility Closures Plans
- ◆ Permit Modifications

- ◆ Temporary Authorization
- ◆ Variances
- ◆ Emergency Permits
- ◆ Technology Certification Decisions
- ◆ Research, Development and Demonstration Projects

Programs should contact OEARA if it is uncertain whether CEQA needs to be addressed for a particular activity.

Statutory, Regulatory and Policy Authorities

Public Resources Code § 21000 et seq

CEQA

California Environmental Quality Act (CEQA). CEQA requires state and local agencies to disclose and consider the environmental implications of their decisions, and to eliminate or reduce the significant environmental impacts of their decisions whenever it is feasible to do so. Throughout the CEQA process, certain public participation requirements are prescribed.

Title 14, CCR § 15000 et seq

- ◆ The State CEQA Guidelines. These are the CEQA regulations and are labeled “guidelines” because they contain many advisory and permissive interpretations in addition to mandatory requirements. These guidelines are binding on all state and local agencies when implementing CEQA.

The guidelines are revised on a regular basis. The latest substantive revision of these guidelines is the October 26, 1998 CEQA Guidelines Revisions.

- ◆ Title 14, CCR §15201. Declares the importance of public participation as an element of the CEQA process. It requires each agency to include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency’s activities. Title 14 also provides for public involvement in the identification and analysis of project impacts as described in Chapters 4 and 5 of this manual.
- ◆ Title 14, CCR §15201 and 15202 of the 1998 CEQA Guidelines Revisions provide:
 - ◆ That each public agency should include in its CEQA procedures making environmental information available in electronic format on the Internet, whenever possible.
 - ◆ To the extent the public agency maintaining a web site, notice of all CEQA public hearings should be made available in electronic format on that site.

DTSC CEQA Policies and Procedures

- ◆ Document # EO-93-001-PP, Entitled *Department Compliance with the Requirements of CEQA*, (July 1993), this document outlines DTSC commitment to complying with the provisions of CEQA within all affected DTSC programs. (Refer to Appendix C in this manual.) This, and subsequent guidance documents, policies and procedures require DTSC programs to contact the Public Participation Branch for guidance in complying with CEQA community involvement activities. The Public Participation Branch is responsible for conducting the following activities:
 - 1) Provide consultation to program staff and management regarding the public interest of sites and facilities; and
 - 2) Develop and plan public participation activities to ensure the public has the opportunity to participate in the CEQA process.
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Roles and Responsibilities

Lead Agency

Lead Agency means the public agency, which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project, and will cause the document to be prepared. (Title 14, CCR § 15367) This is generally determined through preparation of an *Initial Study*, which evaluates the impacts of project activities on various environmental media. If the Initial Study concludes that impacts can be avoided or mitigated to a level of insignificance, DTSC may prepare a Negative Declaration. If impacts are found to exist that could not be mitigated, then an environmental impact report (EIR) would be required. As a Lead Agency, DTSC is responsible for conducting the following:

- ◆ CEQA compliance consultation;
- ◆ Scoping meetings (EIR only);
- ◆ Preparation and circulation of CEQA documents; and
- ◆ Final CEQA determination.

Note: Procedures for conducting Lead Agency environmental analyses are contained in previous DTSC policy and procedure documents and memorandum. Contact the Office of Environmental Analysis, Regulations & Audits for information.

Responsible Agency

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 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. (Title 14, CCR §15381)

DTSC often acts as a Responsible Agency for projects it intends to carry out or approve. Such projects include site mitigation or remediation activities, permitting activities or regulation development activities. In certain cases, the DTSC project may be an aspect of an overall larger project (e.g., construction of a shopping mall vs. removal of contaminated soil) or the same project but with different regulatory authority as that of the Lead Agency (e.g., permitting of a hazardous waste facility vs. land use approval). Depending on a multitude of factors such as timing, coordination among agencies and the degree to which the Lead Agency and DTSC assume oversight authority, the environmental analysis prepared by the Lead Agency must be relied upon by DTSC in meeting its statutory responsibilities under CEQA. DTSC as a Responsible Agency (with certain rare exceptions):

- ◆ Participates in scoping meetings; and
- ◆ Reviews and comments on CEQA documents.

Note: Procedures for conducting Responsible Agency environmental analyses are contained in previous DTSC policy and procedure documents and memorandum. Contact the Office of Environmental Analysis, Regulations & Audits for information.

Trustee Agency

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. (Title 14, CCR § 15386) These agencies are often consulted with the Lead Agency when projects are undertaken in areas which fall within their specific jurisdiction.

Trustee Agencies include:

- ◆ The California Department of Fish and Game with regard to the fish and wild-life, designated rare or endangered native plants, and game refugees, 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.

Trustee Agencies are often called upon to:

- ◆ Participates in scoping meetings; and
- ◆ Review and comment on CEQA documents.

The Public

Under CEQA, the public is afforded input into DTSC's decision-making process before and during the public review and comment period on environmental documents, and is afforded the ability to challenge the CEQA decision during the legal challenge period. The public:

- ◆ Participates in the public scoping meeting;
 - ◆ Review and comment on CEQA documents;
 - ◆ Participates in public hearings; and
 - ◆ Enforces CEQA through judicial action.
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DTSC Project Manager

The DTSC individual having primary responsibility over a project is referred to as the *Project Manager*. The Project Manager is responsible for:

- ◆ Ensuring that DTSC complies with the public participation requirements of CEQA;
 - ◆ Preparing the Initial Study, draft and final environmental documents required under CEQA;
 - ◆ Establishing and maintaining inter-office and inter-agency coordination through management of communication;
 - ◆ Managing and overseeing all technical activities conducted;
 - ◆ Creating the time frame for completion of the project; and
 - ◆ Possibly assuming the public participation lead for a site, utilizing guidance from the Public Participation Specialist.
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DTSC Public Participation Specialist

The DTSC individual having primary responsibility over public participation activities related to a project is referred to as the *Public Participation Specialist*. The Public Participation Specialist is responsible for:

- ◆ Supporting the Project Manager in inter-agency coordination;
- ◆ Providing comments on all documentation going out for public review (e.g., EIR, Negative Declaration, and Initial Study);
- ◆ Providing input and approving all public participation documents and activities (public notices, fact sheets, meetings, etc.);
- ◆ Advising the Project Manager and OEARA staff on issues of community concern and involvement; and
- ◆ Reviewing and providing comments on the Response to Comments.

DTSC Environmental Planner

The DTSC individual having primary responsibility for providing CEQA technical oversight over a project is referred to as the *Environmental Planner*. The Environmental Planner within the *Office of Environmental Analysis, Regulations and Audits* is responsible for:

- ◆ Providing CEQA technical support to program staff on all environmental documents;
 - ◆ Reviewing and approving all CEQA documents prepared by programs within DTSC;
 - ◆ Coordinating with the State Clearinghouse on the circulation and filing of CEQA documents to state agencies; and
 - ◆ Reviewing and approving portions of the Response to Comments that relate to CEQA comments and issues.
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The CEQA Process

Preliminary review of a project to determine CEQA applicability

Once sufficient information about a proposed activity has been submitted to the Project Manager consistent with the requirements of the program in which approval is sought, a determination is made as to whether the activity is subject to the environmental review process under CEQA. This determination is made before an Initial Study is undertaken. An activity is subject to CEQA if:

- ◆ The activity involves the exercise of discretionary powers by a public agency;
- ◆ The activity will result in a direct or reasonably foreseeable indirect physical change in the environment eliminate period; or
- ◆ The activity is a “project” as defined in Title 14, CCR §15378.

Upon completion of the review, the Project Manager is advised to provide the Public Participation Specialist with a summary of the review. Based upon this information, and the current knowledge of the community’s concerns, the Project Manager consults with the Public Participation Specialist regarding the following activities:

- ◆ Initial assessment of community interest;
- ◆ Mailing list development;
- ◆ Location of information repositories; and
- ◆ Other appropriate public participation activities.

Review for CEQA Exemption

If an activity is found to be subject to CEQA based on the preliminary review of activity information, the Project Manager then reviews the proposed project to determine if it may be categorically or statutorily exempt from CEQA. Management Memorandum EO-94-012-MM, entitled *Exemptions and Preparation of NOEs*, provides guidance for DTSC staff on exemption evaluations. OEARA is responsible for the review and approval of all exemption requests and for filing of NOEs with the Governor's Office of Planning and Research (OPR).

Pursuant to Title 14, CCR §15201, if a NOE is filed, there is a 35-day statute of limitations for legal challenge. However, if a NOE is not filed, there is a 180-day statute of limitations. In summary, the following activities need to be performed:

- ◆ The NOE is filed with the OEARA, and the Public Participation Branch is copied;
 - ◆ OEARA files the NOE with OPR; and
 - ◆ If appeals are received, the Project Manager notifies the Public Participation Branch and OEARA.
- .. **Public Notice of Exemption:** Pursuant to DTSC procedures (EO-94-012-MM), NOEs should be public noticed (and placed on DTSC's web site) if the project being exempted requires public notice. For example, if a draft closure plan (CP) or draft interim measure (IM) is considered CEQA exempt, the public notice announcing a comment period on the draft CP or draft IM shall include a statement that the draft NOE is also available for public review and comment. If significant comments are received on the NOE, DTSC shall include responses in the project's Response to Comments. If DTSC determines, after considering comments, that any part of the NOE package should be changed, appropriate changes should be made.

Preparation of an initial study

If the proposed project is not exempt from CEQA, or it is unclear whether an Environmental Impact Report (EIR) is required, an *Initial Study* is conducted in-house by the Project Manager to determine if the project may have a significant effect on the environment. (Refer to Policy and Procedures EO-93-033, regarding In-House Preparation of Initial Studies, September 30, 1993.) An Initial Study is defined as a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. (Title 14, CCR § 15365)

Preparation of a draft Negative Declaration/Mitigated Negative Declaration

If the Initial Study concludes that a draft Negative Declaration or Mitigated Negative Declaration is the appropriate document to be prepared, the Project Manager prepares the draft document and forwards it along with the Initial Study to OEARA for review and approval following procedures established in Policy and Procedures Document #EO-93-001 (See Appendix C for time lines and approval authority).

- .. **Public noticing:** Upon approval of the draft Negative Declaration/Mitigated Negative Declaration, the Project Manager is required under CEQA to provide public notice of the availability of the draft Negative Declaration or Mitigated Negative Declaration for public review. The Project Manager must:
 - Send 15 copies of the draft document, the Notice of Completion/Environmental Document Transmittal Form and the applicable Initial Study to the OPR. Copies must also be sent to affected local agencies having an interest in the project and the OEARA project liaison.
 - Send one copy of the Notice of Completion/Environmental Document Transmittal Form to the county clerk where the project is located. A copy of the draft Negative Declaration and Initial Study should not be sent to the county clerk unless requested. (See DTSC CEQA Guidance Document: *Public Notice Requirements under the California Environmental Quality Act* dated October 16, 1995)

The public notice must be posted for a minimum of 20 days unless otherwise required by law to be 30 days. The notice must be placed in a newspaper of general circulation in the affected area, posted on and off the project site, and mailed to owners and occupants of the property contiguous to the project.

- .. **Public notice content:** Pursuant to Title 14, CCR § 15072 (f), a notice of intent to adopt a Negative Declaration or Mitigated Negative Declaration must specify the following:
 - A brief description of the proposed project and its location.
 - The starting and ending dates for the period during which the lead agency will receive comments on the proposed Negative Declaration or Mitigated Negative Declaration. If the review period has been shortened pursuant to Section 15105, the notice shall include a statement to that effect.
 - The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.
 - The address or addresses where copies of the proposed Negative Declaration or Mitigated Negative Declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed Negative Declaration or Mitigated Negative Declaration, are available for review.

- ✱ The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.
 - ✱ Other information specifically required by statute or regulation for a particular project or type of project.
- .. **Information repositories:** The Initial Study and Negative Declaration are placed at information repositories. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.
- .. **Direct mailings:** Copies of the Initial Study, draft Negative Declaration or Mitigated Negative Declaration and public notice are directly mailed to Responsible Agencies, Trustee Agencies and other agencies with jurisdiction (14CCR § 15073);
- .. **Response to comments:** CEQA requires that the lead agency consider the proposed Negative Declaration or Mitigated Negative Declaration together with comments received during the public comment period, prior to reaching a final decision on the project (Title 14, CCR § 15074). DTSC policy also requires a written response to comments.

If, after public review, DTSC decides that mitigation measures outlined in the draft Mitigated Negative Declaration are infeasible, it may substitute equivalent or more effective mitigation measures. If this is the case, a **public hearing** is required to collect testimony on the matter (CPRC § 21080). If the new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures does not require recirculation of the Mitigated Negative Declaration, a public comment period or a responsiveness summary (CPRC § 21000). The following activities are suggested prior to the public hearing:

- ✱ Development of a fact sheet; and
 - ✱ Development of public notice.
- .. **Recirculation prior to adoption:** DTSC is required to recirculate a Negative Declaration or Mitigated Negative Declaration, when the document must be substantially revised after public notice of its availability has previously been given pursuant to Title 14, CCR § 15072 and 15073.
- .. **Notice of Determination:** Upon approval of a project for which a Negative Declaration or Mitigated Negative Declaration has been approved, DTSC is required to file a Notice of Determination (NOD) pursuant to Title 14, CCR § 15075. The NOD must include the following:
- ✱ An identification of the project including its common name where possible, and its location.

- ✿ A brief description of the project.
- ✿ The date on which the agency approved the project.
- ✿ The determination of the agency that the project will not have a significant effect on the environment.
- ✿ A statement that a Negative Declaration or a Mitigated Negative Declaration has been prepared pursuant to the provisions of CEQA.
- ✿ The address where a copy of the Negative Declaration or Mitigated Negative Declaration may be examined.

A copy of the NOD is also sent to the mandatory mailing list, and others who have requested a copy of the NOD. (This mailing may be done in conjunction with mailing the response to comments document and the decision document for the project.) The filing of the NOD starts a 30-day statute of limitations on court challenges to the approval under CEQA (14CCR § 15075).

Environmental Impact Reports

Certain projects may necessitate preparation of an EIR if the project will or may have a significant effect upon the environment. Generally, this determination is made following preliminary review of a project application or technical study or upon completion of an Initial Study. In addition, preparation of an EIR or, if appropriate, a supplement or addendum to an EIR, is mandatory for certain types of hazardous waste projects (PRC § 21151.1).

- **Notice of Preparation:** Immediately after deciding that an EIR is required for a project, the Project Manager is required to prepare and file a *Notice of Preparation* (NOP) with OPR following established DTSC procedures (see *DTSC Guidance Document: Public Notice Requirements Under the California Environmental Quality Act* dated October 16, 1995). At a minimum, the NOP shall include:
 - ✿ A description of the project;
 - ✿ Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name, or by a street address in an urbanized area), and
 - ✿ Probable environmental effects of the project.

As a Lead Agency, DTSC may begin work on the draft EIR immediately without awaiting responses to the NOP. The draft EIR in preparation may need to be revised or expanded to conform to responses to the NOP. DTSC is prohibited from circulating a draft EIR for public review before the time period for responses to the NOP has expired.

- **Scoping meetings:** Title 14, CCR § 15082 allows a Lead Agency, a Responsible Agency, a Trustee Agency, or a project applicant the opportunity to request one or more meetings between representatives of the agencies involved in a project to assist the Lead Agency in determining the scope and content of the environ-

mental information which the Responsible Agency may require. Such meetings, often referred to as *scoping meetings*, must be convened by the Lead Agency as soon as possible, but no later than 30 days after the meetings were requested.

Public scoping meeting are encouraged for all high-interest projects, such as new incinerators and treatment storage and disposal facilities. The targeted audience for such scoping meeting is dependent upon the level of community and agency interest. To determine which audience the scoping meeting should be directed to, consult with the Public Participation Specialist. Additional guidance on meetings and consultation can be found in the DTSC Guidance Document #EO-93-035-MM entitled *Meetings and Consultation Pursuant to the California Environmental Quality Act*, dated January 5, 1994.

- **Notice of Completion:** A Notice of Completion (NOC) is required to be filed with OPR indicating that a draft EIR has been completed (Title 14, CCR § 15085). The Project Manager is responsible for completing and forwarding the NOC package to OEARA for approval and subsequent filing with OPR. The NOC is to be submitted to OPR simultaneously with the public noticing of the draft EIR.
- **Public notice of the draft EIR:** Upon completion and approval of a draft EIR by the Branch Chief, the Project Manager must send 15 copies of the documents and one copy of the Notice of Completion/Environmental Document Transmittal Form to OPR. Copies must also be sent to affected agencies having interest in the project, and the OEARA project liaison.

In addition, the Project Manager must send one copy of the Notice of Completion/Environmental Document Transmittal Form to the county clerk of the county where the project is located. A copy of the draft EIR need not be sent to the county clerk unless requested.

DTSC must also provide public notice of the availability of the draft EIR for public review. (CPRC §15087 and §21092). The public notice must be published in a newspaper of general circulation (if more than one geographic area is affected, the newspaper with the largest general circulation in the affected areas must be used), placed on DTSC's web site, and shall include:

- ◆ Project description and location, including the anticipated significant effects;
- ◆ A 45-day public comment period;
- ◆ Identification of the lead agency;
- ◆ Location of information repositories; and
- ◆ Date and time of any public meeting or hearing (if applicable).

The Public Notice must be:

- ◆ Posted on and off the site in the area of the proposed project;
- ◆ Mailed directly to those on the project mailing list, which must include contiguous property owners and occupants (a 1/4 mile radius shall be used

for a proposed project involving the burning of hazardous waste or refuse-derived fuel); and

- Placed, along with the Initial Study (if prepared) and the draft EIR, in the information repositories (public libraries in the affected areas and DTSC office).

•• **Response to Comments:** CEQA Guidelines require the lead agency to evaluate comments on a draft EIR and prepare a written response. Written responses should explain whether the draft EIR was changed as a result of the comment or the reasons why specific comments and suggestions were not accepted. The Project Manager is responsible for:

- Forwarding a copy of the draft Response to Comments to the assigned Public Participation Specialist and OEARA for review and comment prior to release;
- Ensuring that a copy of the final Response to Comments is mailed to those who provided comments; and
- Ensuring that the final Response to Comments package is sent to information repositories.

•• **Notice of Determination:** The Notice of Determination (NOD) is prepared after DTSC decides to approve a project for which an EIR has been completed (Title 14, CCR § 15094). This notice is usually done concurrently with the public notice that the final EIR is available to the public. DTSC is required to recirculate an EIR when the document must be substantially revised after public comment (Title 14, CCR § 15073.5). State agencies are not required to file a NOD with the county clerk. They are only required to file with OPR. Upon receipt, there is a 30-day statute of limitations during which court challenges to the decision can be made. The notice shall include:

- An identification of the project including its common name where possible and its location.
- A brief description of the project.
- The date when the agency approved the project.
- The determination of the agency whether the project in its approved form will have a significant effect on the environment.
- A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.
- Whether mitigation measures were made a condition of the approval of the project.
- Whether findings were made pursuant to Section 15091.
- Whether a Statement of Overriding Considerations was adopted for the project.
- The address where a copy of the final EIR and the record of project approval may be examined.

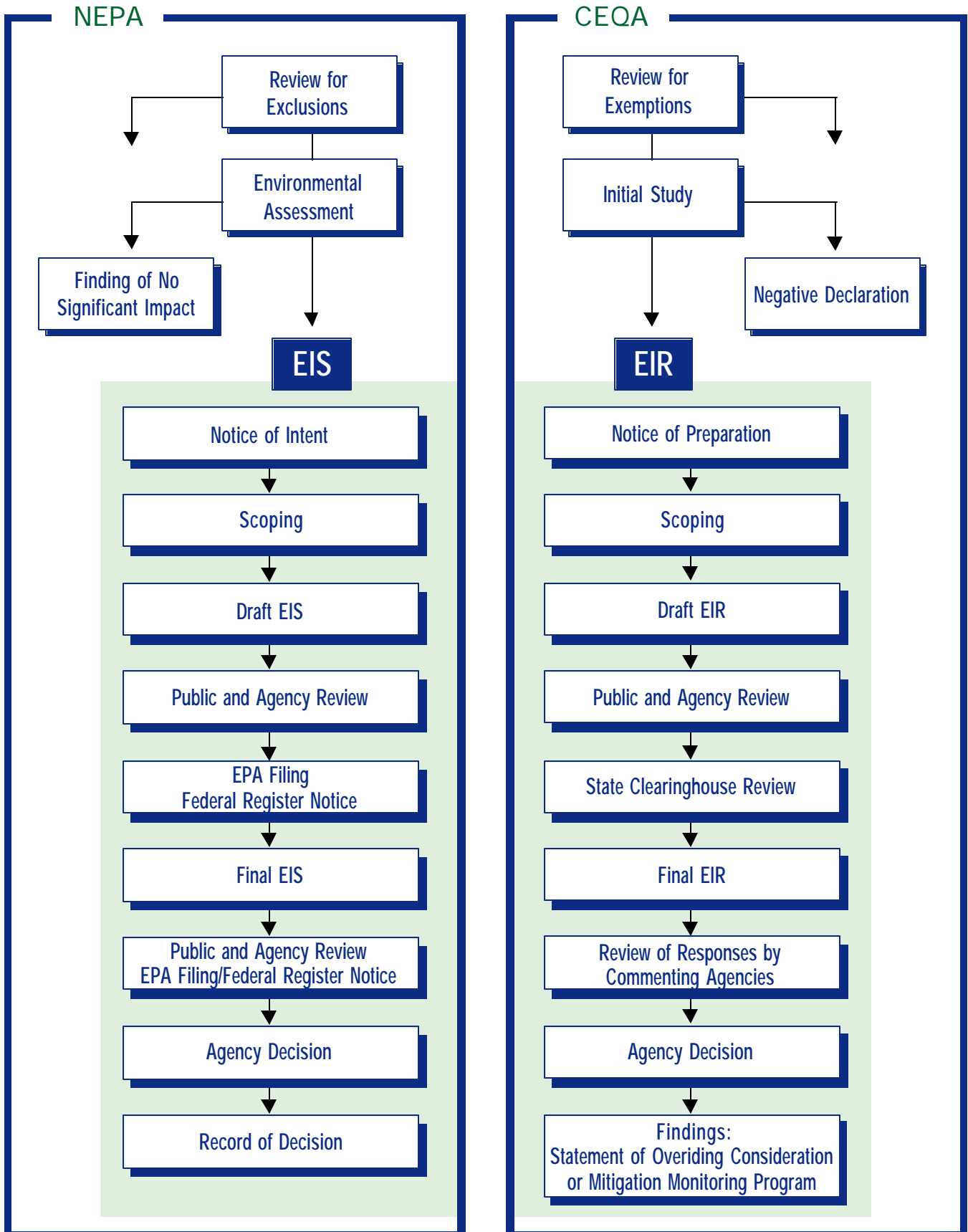
Note: Additional guidance on filing of NODs can be found in existing DTSC guidance documents (see *DTSC Guidance Document: Public Notice Requirements Under the California Environments Quality Act* dated October 16, 1995).

Final CEQA Documents

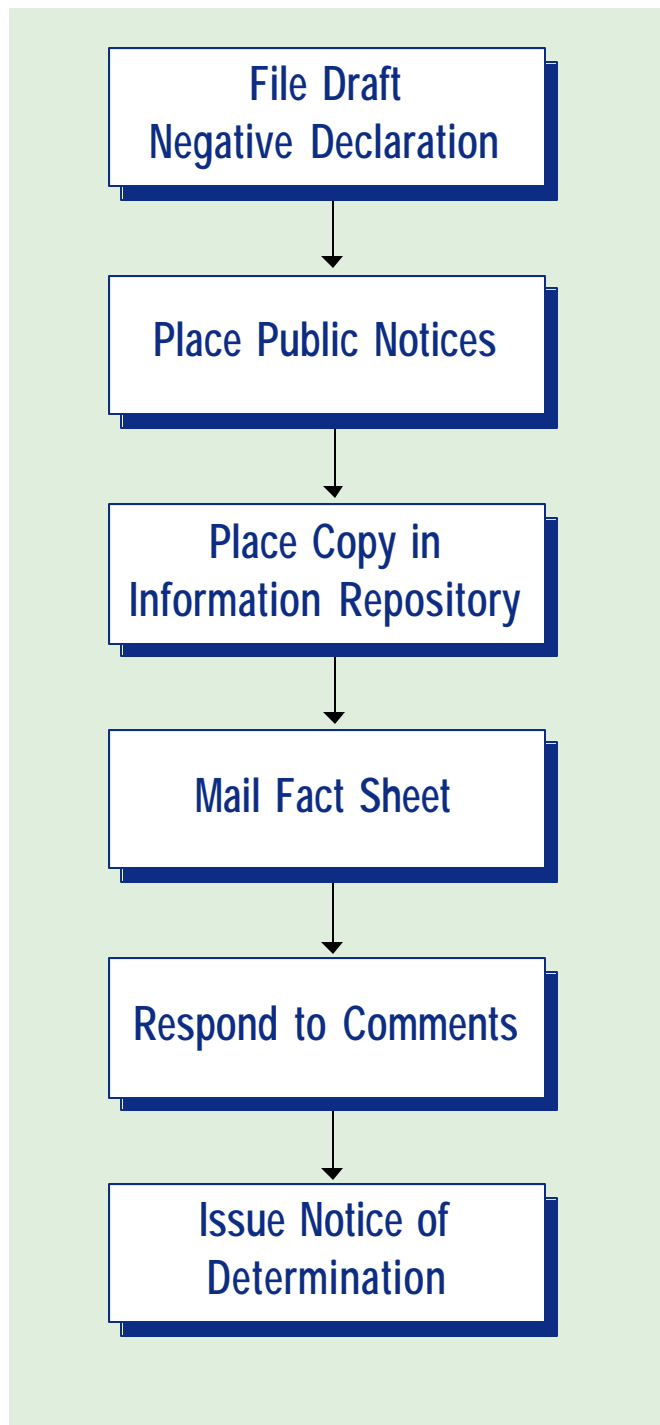
The final CEQA documents are sent to:

- ◆ Information repositories;
- ◆ Responsible agencies;
- ◆ Trustee agencies;
- ◆ Other agencies with jurisdiction; and
- ◆ OEARA

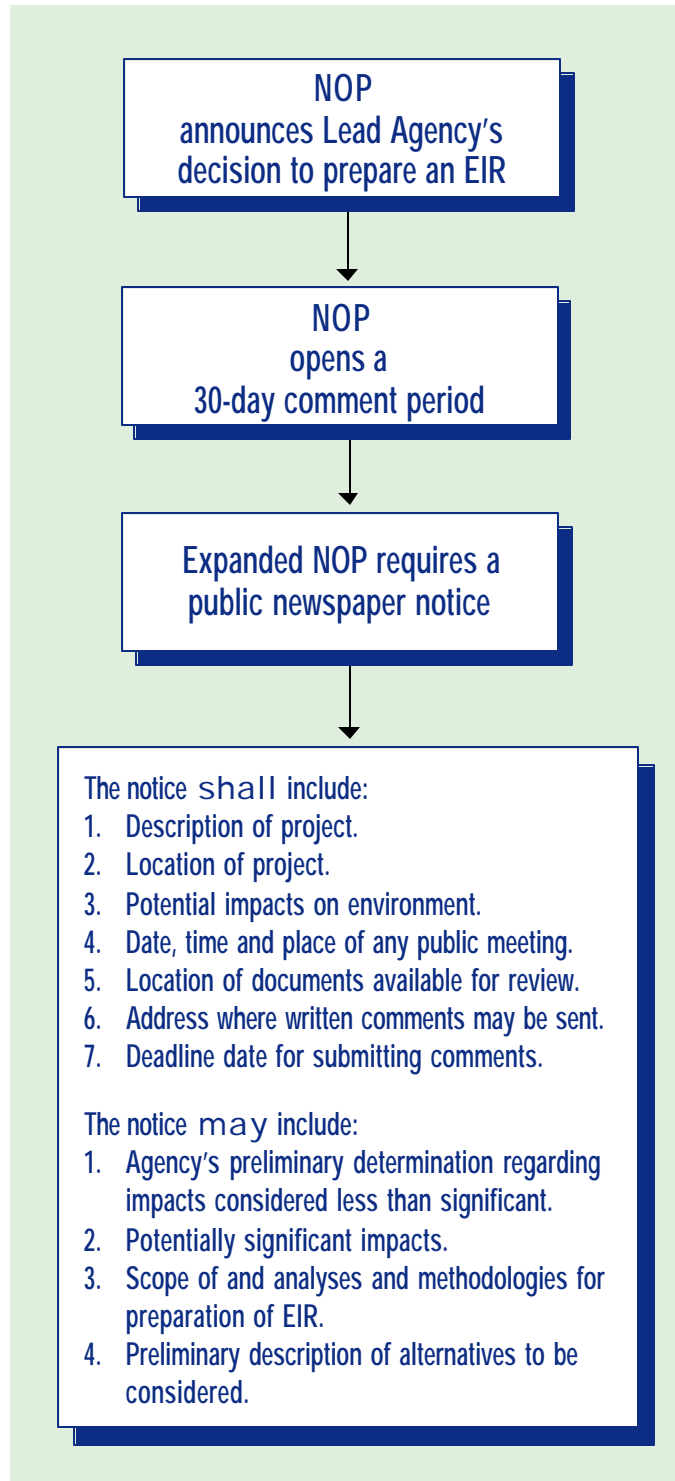
NEPA and CEQA: Parallel Processes



Public Participation in the Negative Declaration Process



Public Participation for Notice of Preparation (NOP)



The EIR Process for Permits

