

CEQA Lead Agencies Must Retain Project E-mails

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The California Environmental Quality Act (CEQA) requires a lead agency to retain e-mail correspondence relating to a project's environmental review until the applicable limitations period to challenge the project has expired. In *Golden Door Properties, LLC v. Superior Court*, the California Court of Appeal held that CEQA prohibits a lead agency from deleting such e-mails before the project's administrative record is prepared in a CEQA lawsuit.

San Diego County was the lead agency for a large mixed-use project that was approved. Project opponents sought years of project-related e-mails from the County and project consultants to be part of the administrative record in a CEQA challenge to the project approval. The County could not produce the e-mails, however, because most had been deleted pursuant to its policy of automatically deleting e-mails after 60-days unless they are marked as "official records."

The County's deletion practices violated CEQA where the e-mails were indiscriminately deleted and not included in the administrative record. In so deciding, the Court cited the mandatory and broad language of Public Resources Code section 21167.6, which provides that "all" written evidence or correspondence, and "all" internal agency communications and staff notes with respect to the project, "shall" be included in the record of proceedings in a CEQA challenge. By broadly requiring all writings and communications relating to a project to be included in the record, section 21167.6 necessarily requires an agency to retain such writings and communications, including project-related e-mails, the court held.

Acknowledging the costs associated with retaining e-mails, the Court of Appeal clarified that its decision does not require public agencies to retain e-mails that are unrelated to a project or CEQA compliance, and that agencies are not required to retain "[t]he e-mail equivalent to sticky notes, calendaring faxes, and social hallway conversations." The Court additionally emphasized that its opinion does not require "project-related e-mails to be retained in perpetuity," and the lapse of CEQA's limitations periods, which are generally short, "is a relevant consideration in determining e-mail retention periods consistent with" CEQA.

Nicholas R. Ghirelli

Based on this decision, public agencies should carefully review their document retention policies to ensure they properly preserve project-related e-mails for inclusion in CEQA administrative records.

If you have any questions about how this decision may impact your agency, please contact **Nicholas Ghirelli** or **Darrelle Field**.