



**COUNTY OF SAN LUIS OBISPO
BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building		(2) MEETING DATE 12/5/2017		(3) CONTACT/PHONE Rob Fitzroy, Deputy Director/805-781-5708	
(4) SUBJECT Receive and file a report on existing California Environmental Quality Act (CEQA) practices and procedures, and consider amendments to the County of San Luis Obispo CEQA Guidelines. All Districts.					
(5) RECOMMENDED ACTION It is recommended that the Board receive and file the report and consider amendments to the existing County CEQA Guidelines.					
(6) FUNDING SOURCE(S) N/A		(7) CURRENT YEAR FINANCIAL IMPACT \$0.00		(8) ANNUAL FINANCIAL IMPACT \$0.00	
(9) BUDGETED? N/A					
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. _____) <input checked="" type="checkbox"/> Board Business (Time Est. <u>60 min.</u>)					
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A					
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A				(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A		(15) BUSINESS IMPACT STATEMENT? No		(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date : <u>February 21, 2017 and October 11, 2016</u>	
(17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe					
(18) SUPERVISOR DISTRICT(S) All Districts					



COUNTY OF SAN LUIS OBISPO

TO: Board of Supervisors

FROM: Department of Planning & Building / Rob Fitzroy, Deputy Director

VIA: Marvin Rose, Interim Director

DATE: 12/5/2017

SUBJECT: Receive and file a report on existing California Environmental Quality Act (CEQA) practices and procedures, and consider amendments to the County of San Luis Obispo CEQA Guidelines. All Districts.

RECOMMENDATION

It is recommended that the Board receive and file the report and consider amendments to the existing County CEQA Guidelines.

DISCUSSION

Background

During a strategic planning Board of Supervisors meeting on October 11, 2016 and February 21, 2017, your Board directed staff to schedule a future discussion to consider changes to the County's current guidelines for the implementation of the California Environmental Quality Act (CEQA) and explore options wherein the County may release the Administrative Draft Environmental Impact Report (ADEIR) for public review.

The State CEQA Guidelines (State Guidelines) are administrative regulations governing implementation of CEQA (Public Resources Code section 2100). The State Guidelines reflect the requirements set forth in the Public Resources Code, as well as court decisions interpreting statute and practical planning considerations. Among other things, the State Guidelines explain how to determine whether an activity is subject to environmental review, what steps are involved in the environmental review process, and the required content of environmental documents. The State Guidelines apply to public agencies throughout the state, including local governments, special districts, and state agencies.

County CEQA Guidelines

All public agencies are required to adopt specific criteria, objectives and procedures for implementing CEQA. These are in addition to the statewide guidelines which are more general and apply to all agencies in the state. Some jurisdictions adopt the state-prepared CEQA guidelines as their CEQA procedures. The County CEQA Guidelines (County Guidelines) supplement the State Guidelines and, should the State Guidelines be amended, as they may be from time to time, including definitions and appendices, are incorporated by reference in the County Guidelines as though set forth in full. Any adopted local Guidelines must be consistent with State Guidelines, case law, and other state laws including the Public Records Act.

The County adopted CEQA Guidelines (Guidelines) on August 15, 1995. The purpose of the County Guidelines is to condense the otherwise voluminous standards and regulations of the State Guidelines into an easy to understand and concise document, and provide definitions, procedures, criteria, and objectives for the implementation of CEQA in the County. The Guidelines are intended to facilitate County compliance with CEQA and standardize procedures for the evaluation of projects and the preparation of environmental documents when the County of San Luis Obispo is the Lead, Responsible, or Reviewing Agency under CEQA.

The County's guidelines include no provisions that are more restrictive than state guidelines. The County's Guidelines implement CEQA by reference and offer a more concise option to the full statute. There are two instances where the County's Guidelines include provisions that are intended to expand public involvement in the CEQA process that are not otherwise required by state law. These two provisions are as follows:

Courtesy Notice

A weekly announcement, summarizing the official actions of the Environmental Coordinator is posted in the Department of Planning and Building and is included as an information item following on the Board of Supervisors agenda. The announcement includes a list of projects receiving proposed Negative Declarations, may disclose the receipt of appeals of proposed Negative Declarations, may announce the availability of draft and final EIRs, and may include any other information the Environmental Coordinator deems necessary and appropriate (Article 7 Section 700.00 et al County Guidelines).

The purpose of the Courtesy Notice is to provide an easily accessible location where the public can view environmental determinations.

Request for Review (Appeal)

Any person may file a "Request for Review" of a proposed Negative Declaration. These requests must be made in writing, stating the basis for the filing, and must be received by the Environmental Coordinator within 14 days of the posting of the announcement of a proposed Negative Declaration. This process affords the public the opportunity to focus additional scrutiny on proposed Negative Declarations. It supplements the opportunities of the public to comment on proposed Negative Declarations that is afforded by CEQA, the State Guidelines, and the County's CEQA Guidelines.

The "Request for Review" is similar to an appeal and is heard and considered at the time of the public hearing of the project. When a hearing to consider a project is not scheduled, the "Request for Review" is forwarded to the Planning Director for consideration. The Planning Director schedules and holds a public hearing to consider the request, together with consideration of the approval or denial of the proposed project (Article 8 Section 800.00 et al County Guidelines). Currently, an \$850 fee is charged for the Review, in compliance with the County Fee Schedule.

Current County EIR Professional Practice

County staff currently follows internal practices to ensure transparency throughout the Environmental Impact Report (EIR) process. When selecting an EIR consultant for an applicant-funded project, County Staff follows the County-wide purchasing procedures set forth in the *County's Purchasing Handbook* (updated December 10, 2014) which include the *Request for Proposal (RFP) Procedure for Professional Services* memorandum and the *Proposal Selection Procedure* memorandum which details the steps required for selection and award of contracts for professional services over \$25,000 per fiscal year.

The project description is the first work product to be used in the EIR for a proposed project and is the basis of analysis for environmental impacts of that project on the environment. The County works cooperatively with the applicant to ensure both parties are satisfied with the final project description early in the EIR process. The County coordinates with the applicant to prepare a scope of work and project description. The applicant must sign off on the project description ensuring that it is accurate. There are additional milestones throughout the development of the Draft EIR (DEIR) that include meetings with the applicant and County staff. For example, current practice includes meeting with the applicant periodically throughout the process to alert the applicant of any concerning results of technical studies, to discuss project alternatives, discuss the technical feasibility of project alternatives, and review any proposed mitigation measures that could result in potentially significant expense. Under CEQA, the DEIR is the public document that is circulated to agencies and the public to provide an opportunity to comment on the analysis and conclusions.

The Administrative DEIR (ADEIR) is a working draft, prepared by the EIR consultant. The County does not currently circulate the ADEIR to the public or to the applicant. One primary reason that the County does not circulate the ADEIR is to ensure that the document is an independent and objective analysis of the project – a mandate of the CEQA statute. In addition, the ADEIR must be accurate and meet certain requirements of CEQA and local regulations. If the County determines that the ADEIR is inadequate, it must be revised to correct the deficiencies identified in the preliminary review before it is released to the public. In addition, the focus of the review by staff is on accuracy, consistency and legal defensibility. An ADEIR may also be referred to County Counsel to review consistency with case law. If any major significant project issues arise during preparation of the environmental document by the Consultant, the County and the Consultant notify the applicant and meet with the applicant to go over the findings. Following preparation of the ADEIR, and prior to public release, the County offers to meet with applicants to discuss any major issues that have arisen, and to discuss the alternatives section to ensure that any additional alternatives the applicant may desire are included as part of the environmental document.

Once accepted by the County as an adequate Draft EIR (DEIR), copies are then distributed to appropriate entities for public and agency review.

Thresholds of Significance

The County's determination on whether or not a project may have a significant effect on the environment must be based on thresholds of significance. Thresholds are measures of environmental change which are either quantitative, or as specific as possible for topics which are resistant to quantification such as aesthetics, cultural resources, and biology. Generally, projects which have a potential effect above a threshold of significance, and cannot be shown to be mitigated will require an EIR.

Thresholds of significance are intended to supplement provisions in the State Guidelines for determination of significant environmental effect. Thresholds established for general use by a Lead Agency must be: adopted by ordinance, resolution, rule, or regulation; be subjected to public review; and be supported by substantial evidence (State Guidelines Section 15064.7(b)).

Lead Agencies may not arbitrarily establish thresholds to either create or avoid significant impacts. Thresholds must be backed by substantial evidence, which is defined in the CEQA statute to mean “facts, reasonable assumptions predicated on facts, and expert opinion supported by facts” (14 CCR X 15064.7(b)). Overall, thresholds should be dynamic and flexible to account for application in different settings (rural vs. urban) and site-specific conditions. Using regulatory standards (e.g., air and water quality standards, building codes) as thresholds promotes efficiency in the CEQA process by reducing the need to “reinvent the wheel” when analyzing highly regulated impacts.

San Luis Obispo County Thresholds of Significance

There are several ways in which Lead Agencies may utilize thresholds of significance. Most commonly, Lead Agencies rely upon local thresholds and regulations, such as provisions in the General Plan or Land Use Ordinance, and those established by permitting agencies, such as the local Air Pollution Control District. The County of San Luis Obispo utilizes this approach for thresholds of significance. Benefits to this approach are that it increases flexibility for our diverse County to ensure that the appropriate thresholds are applied to projects and that each threshold source can be updated as needed. These sources include the following:

1. Thresholds provided in the General Plan and other local planning documents (e.g. Noise Element);
2. Appendix G of the State Guidelines; CEQA's mandatory findings of significance (State Guidelines Section 15065);
3. Thresholds established by regulatory agencies including Regional Water Quality Control Board, federal and state wildlife agencies;
4. Thresholds established through consultation with Responsible Agencies (such as Caltrans for impacts to state highways);
5. And thresholds established by other local agencies including San Luis Obispo County Air Pollution Control District.
6. State CEQA Guidelines Section 15064 – provides guidance to Lead Agencies regarding how to determine whether environmental effects caused by a project are significant.
7. State CEQA Guidelines Section 15064.4 – provides specific guidance to Lead Agencies regarding how to determine whether the emissions of greenhouse gases by a project are significant.
8. State CEQA Guidelines Section 15064.5 - provides specific guidance to Lead Agencies regarding how to determine whether environmental effects caused by a project on archaeological and historical resources are significant.
9. State CEQA Guidelines Section 15065 – discusses the circumstances under which a Lead Agency must deem environmental impacts as significant.

10. State CEQA Guidelines Section 15382 – provides the definition of significant effect on the environment.

To make it easier for the public to understand all the thresholds used by the County, the Department is currently in the process of preparing a San Luis Obispo County Threshold Reference Document. The Reference Document is based on items 1 through 10 above. The Reference Document will be available to applicants, the public, and consultants. Staff has begun this work effort and has targeted this to be completed by the end of 2018.

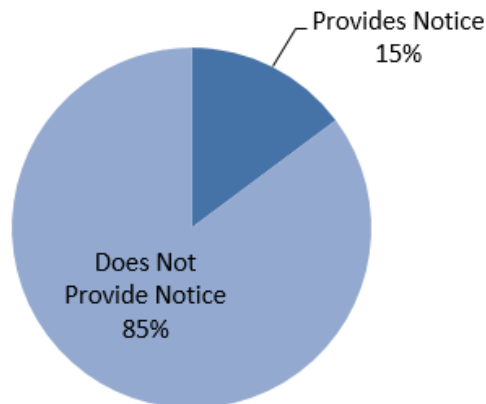
Local CEQA Thresholds

A less common practice is when Lead Agencies choose to prepare a single, localized thresholds of significance document. This is different than the method discussed above because it involves the creation of individualized thresholds specific to the local jurisdiction. The Counties of San Diego and Santa Barbara have formally adopted thresholds. When taking this approach, all thresholds must be established based on substantial evidence and require their own CEQA document, i.e. an EIR. San Diego and Santa Barbara counties required several years to prepare localized thresholds. It required research, preparation of technical studies, and processing of the thresholds through the public hearing process. Both counties also fund an on-going program to update thresholds as necessary. Few lead agencies in California have formally adopted local thresholds and instead rely on the methodology similar to San Luis Obispo County as discussed in items 1 through 10 listed above.

CEQA Practices of Other Jurisdictions

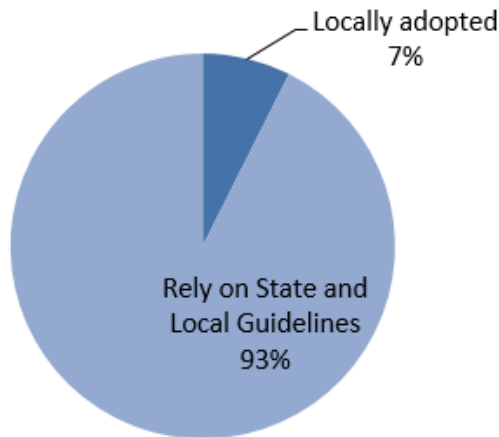
Between March and August 2017, staff gathered information and data from other counties and cities regarding local CEQA Guidelines in an effort to analyze comparisons and differences in procedures, implementation, and objectives of the County Guidelines. Staff surveyed nine local and regional cities, including Arroyo Grande, Atascadero, Grover Beach, Modesto, Morro Bay, Paso Robles, Pismo, Santa Maria, and San Luis Obispo. Staff surveyed 17 California counties, including Santa Barbara, Ventura, San Diego, Monterey, Santa Cruz, Humboldt, Mendocino, Napa, Sonoma, San Mateo, Del Norte, El Dorado, Sacramento, Stanislaus, Fresno, Tulare, and Kern. Below is a summary of the information gathered:

Courtesy Noticing Survey



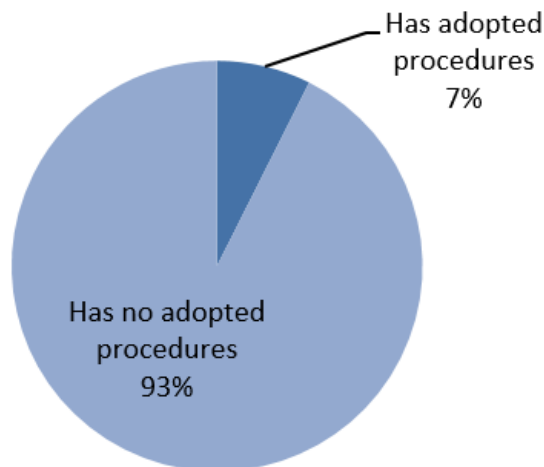
Of the 27 jurisdictions surveyed, four jurisdictions including San Luis Obispo County provide courtesy noticing.

Thresholds of Significance Survey



Of the 27 jurisdictions surveyed, two jurisdictions, Santa Barbara County and San Diego County have formally adopted localized Thresholds of Significance. All other jurisdictions surveyed, including San Luis Obispo County use the thresholds of significance based on CEQA, the Initial Study Checklist, and regulatory standards.

ADEIR Release Procedures Survey



Of the 27 jurisdictions surveyed, two jurisdictions, Santa Barbara County and Sacramento County provide written procedures for reviewing of the Administrative Draft Environmental Impact Report. All other jurisdictions surveyed, including San Luis Obispo County do not currently circulate the ADEIR or have procedures to that affect.

Overall, the majority of cities and counties adopt the State Guidelines as their CEQA procedures. Attachment 5 provides results of the information analyzed.

Administrative Draft EIR (ADEIR)

The ADEIR is the first rough draft of the EIR that is reviewed by the Lead Agency in order to analyze information submitted by the Consultant so that the DEIR will reflect the independent judgement and analysis of the Lead Agency. The ADEIR is subject to change based on that review between circulation and release of the DEIR for public review and comment. It is an internal draft document and is not commonly circulated to the public. Formal public comments submitted during the official public review of the DEIR will be responded to in the Final EIR.

Two jurisdictions, the County of Santa Barbara and County of Sacramento, provide adopted procedures for reviewing of the ADEIR:

*County Santa Barbara - ADEIR Review Procedures
Guidelines for the Implementation of CEQA as Amended (Revised May 25, 2010)*

The County of Santa Barbara's lead department staff consults with the applicant during preparation of the administrative draft and draft environmental document to confirm the project description, project objectives, and identification of alternatives, and to discuss the feasibility of identified mitigation measures. Once the administrative draft environmental document is completed, it is circulated to other county departments as necessary for review and comment. Additionally, the applicant has the opportunity to receive a copy for review and comment. If the applicant receives a copy of the administrative draft environmental document, the document is also made available to any other member of the public upon request. Any communication between the lead agency, consultant, and applicant that results in a change in the administrative draft is memorialized in writing and made part of the public record.

*County of Sacramento - ADEIR Review Procedures
Procedures for Preparation & Processing of Environmental Documents Pursuant to CEQA (2009)*

As circumstances warrant, and as determined by the County Environmental Coordinator, the County of Sacramento allows the early review of the administrative draft documents by applicants and any requesting member of the public, generally for EIR projects. An individual would have to make a specific request to be notified of the availability of the administrative draft document for a project. The review is allowed just prior to release of the document. In some cases, only certain chapters are shared for review. All access to documents is equal (including timing of availability) between the applicant and any member of the public. Nothing is officially released prior to public review draft. Any comments received on any administrative draft document are not construed as official comments and the Department [of Planning and Building] is not obligated to make any suggested changes.

There may be instances when other jurisdictions have released the ADEIR, or sections of the ADEIR in certain instances. Staff's research specifically looked for jurisdictions that have locally adopted procedures for release of the ADEIR rather than individual past instances.

Legal Analysis of Release of the ADEIR

If the County chooses to change its current practice and make the ADEIR available to private applicants and their consultants and counsel, then it will also need to make the document available to any other interested member of the public. Any circulation to the public means that the ADEIR will become part of the administrative record in the event of subsequent CEQA litigation. (Pub. Res. Code Sec. 21167.6(e)(10).)

In a four-year period between the summers of 2009 and 2013 the law allowed an ADEIR to be shared between counsel for the local government and the applicant's counsel without being made available to the broader public. (*California Oak Foundation v. County of Tehama* (2009) 174 Cal.App.4th 1217.) The *California Oak Foundation* decision reasoned that the CEQA legal work of the local government required consultation with the applicant's attorney and the ADEIR therefore remained within the scope of the attorney-client privilege.

This reasoning, based on the common interest of the local government and the applicant in creating a legally defensible EIR, was explicitly rejected in a case involving the City of Ceres. (*Citizens for Ceres v. Superior Court of Stanislaus County* (2013) 217 Cal.App.4th 889.) The *Ceres* court acknowledged that the local government and the applicant can become allied in a way that allows them to share legal strategy and documents. However, this can only happen after the Final EIR is certified and the project is approved.

The California Supreme Court has not chosen to weigh-in on the different approaches of the *California Oak Foundation* and *Ceres* courts. At this point, *Ceres*, the most recent decision, would likely be a significant consideration of our local trial and appellate courts. Rulings that would follow the *Ceres* decision would consider that an ADEIR had become a public document by virtue of its release to a project applicant.

Options for Board Consideration

1. Make no change to the existing County CEQA Guidelines.

The existing County CEQA Guidelines currently satisfy the requirements of CEQA to have adopted procedures for the evaluation of projects and the preparation of EIRs and Negative Declarations.

2. Amend the County CEQA Guidelines to establish specific applicant consultation milestones throughout the EIR process for private projects to include the following staff/applicant meetings (via adoption of Resolution shown as Attachment 2):
 - Finalize project description with applicant early in the EIR process
 - Applicant to sign off on the project description ensuring accuracy
 - Coordinate with the applicant to prepare a scope of work based on the final project description
 - Meet with the applicant periodically to:
 - Alert the applicant of any concerning results of technical studies
 - Discuss project alternatives and the technical feasibility of project alternatives
 - Review any proposed mitigation measures that could result in potentially significant expense
3. Amend the County CEQA Guidelines to incorporate the applicant consultation milestones and establish procedures for the public availability of Administrative Draft Environmental Impact Reports for private projects for applicant and the public. (via adoption of Resolution shown as Attachment 3).

If the County chooses to change its current practice and make the ADEIR available to private applicants and their consultants and counsel, then it will also need to make the document available to any other interested member of the public. Any circulation to the public means that the ADEIR will become part of the administrative record in the event of subsequent CEQA litigation. (Pub. Res. Code Sec. 21167.6(e)(10).)

OTHER AGENCY INVOLVEMENT/IMPACT

County staff consulted with County Counsel, Office of Planning and Research, Cities of Arroyo Grande, Atascadero, Grover Beach, Modesto, Morro Bay, Paso Robles, Pismo, Santa Maria, San Luis Obispo, Counties of Del Norte, El Dorado, Fresno, Humboldt, Kern, Mendocino, Monterey, Napa, Sacramento, San Diego, San Mateo, Santa Barbara, Santa Cruz, Sonoma, Stanislaus, Ventura, Tulare, Economic Vitality Corporation, Homebuilders Association, industry professionals and members of the public representing environmental interest groups.

The following topics were discussed during these meetings: Review of the Administrative Draft EIR, Selection of EIR Consultants, Thresholds of Significance, Alternative Section to the EIR, Impact Classification, EIR Management, and Determinate Timeframes for Processing.

FINANCIAL CONSIDERATIONS

This review of the County CEQA Guidelines and preparation of the staff report was covered under the existing Planning and Building Department budget. There are no direct financial considerations associated with this item.

RESULTS

Adopting the Resolution shown as Attachment 2 would amend the existing County CEQA Guidelines to establish specific applicant consultation milestones throughout the EIR process for private projects.

Adopting the resolution shown as Attachment 3 would amend the existing County CEQA Guidelines to establish specific applicant consultation milestones throughout the EIR process for private projects, and add formal procedures for the release of the ADEIR to the applicant and the public for private projects consistent with the Public Records Act.

ATTACHMENTS

1. Attachment 1 - PowerPoint
2. Attachment 2 - Resolution adopting amendments to County CEQA Guidelines including applicant consultation milestones
3. Attachment 3 - Resolution adopting amendments to County CEQA Guidelines including applicant consultation milestones and ADEIR release procedures
4. Attachment 4 - County CEQA Guidelines with strikethrough and amended language
5. Attachment 5 - CEQA Guidelines Research Results
6. Attachment 6 - CEQA Notice of Exemption