

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: County Counsel *MM*

BOARD AGENDA # *E-1

Urgent Routine

AGENDA DATE May 13, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Amend the Stanislaus County CEQA Guidelines and Procedures to Authorize an Environmental Impact Report to Be Prepared by Any Method Authorized by State CEQA Guidelines Section 15084 (d)

STAFF RECOMMENDATIONS:

1. Amend the Stanislaus County CEQA Guidelines and Procedures as set forth in Attachment 2 to authorize an Environmental Impact Report to be prepared by any method authorized by State CEQA Guidelines Section 15084 (d).

FISCAL IMPACT:

This action will not result in an impact to the general fund.

BOARD ACTION AS FOLLOWS:

No. 2008-341

On motion of Supervisor Grover, Seconded by Supervisor DeMartini
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Amend the Stanislaus County CEQA Guidelines and Procedures to Authorize an Environmental Impact Report to Be Prepared by Any Method Authorized by State CEQA Guidelines Section 15084 (d)

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DISCUSSION:

The Board of Supervisors adopted the Stanislaus County CEQA Guidelines and Procedures ("County Guidelines") in 1983, and amended them in 1989. (Attachment 1) Since then, the State adopted CEQA Guidelines ("State Guidelines") have been revised through the years and there is a need to update the County Guidelines.

In particular, Section 6 of the County Guidelines provides that an Environmental Impact Report ("EIR") shall be prepared by the department responsible for the project, or by a consultant retained by the department. State Guidelines section 15084 (d) provides that a Lead agency may choose one of several arrangements for preparing an EIR, including (1) directly by its own staff; (2) contracting with another public or private entity; (3) accepting a draft prepared by the applicant or the applicant's consultant; (4) executing a contract or memorandum of understanding with the applicant for preparation of the EIR by an independent contractor; or (5) using a previously prepared EIR. It is common practice throughout the State for an EIR to be prepared by the applicant's consultant. Regardless of what arrangement is made for preparing an EIR, the Draft EIR and Final EIR must represent the County's independent judgment.

Staff recommends the Board adopt the amendment to the County Guidelines in Attachment 2 to provide flexibility in how EIR's are prepared for County projects consistent with State law and State CEQA Guidelines.

POLICY ISSUES:

The Board of Supervisors should determine whether or not approval of the proposed amendment to the County CEQA Guidelines is consistent with the Board priorities of Effective Partnerships with private entities and the Efficient Delivery of Public Services.

STAFFING:

There is no staffing impact associated with this request.

STANISLAUS COUNTY
CEQA GUIDELINES AND PROCEDURES

Adopted
December , 1983
by the
Stanislaus County Board of Supervisors
Amended
January 17, 1989

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Section 1 - County Implementation

The Stanislaus County Board of Supervisors, as the governing legislative body of the County, has hereby adopted, by reference, the August 1, 1983, State CEQA Guidelines for compliance with the California Environmental Quality Act and any subsequent revisions thereto, as permitted by Section 15022(d) of those Guidelines. The Board has also established the following procedures for local implementation of CEQA to be followed by all organizational subdivisions of the County. These subdivisions may develop, and revise as necessary, office procedures and forms to implement their duties. For areas of CEQA responsibility not specifically addressed by these Stanislaus County procedures, the County will follow the text of the State CEQA Guidelines.

Section 2 - Delegation of Responsibilities

- A. The County hereby delegates the following functions to its staff members to assist in the administration of CEQA:
1. Determination of whether a project is exempt.
 2. Conducting an initial study.
 3. Preparation and circulation of a negative declaration or environmental impact report, including consultation with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of a project.
 4. Assuring adequate opportunity and time for public review and comment on the draft environmental impact report or negative declaration.
 5. Conducting public hearings.
 6. Preparation of recommended responses to public comments.
 7. Recommendation as to adequacy of an environmental impact report.
 8. Certification that the decision-making body has reviewed and considered an environmental impact report or negative declaration.
 9. Preparation and distribution of notices.
 10. Filing of environmental documents with the County Clerk/Recorder and Office of Planning and Research.
 11. Preparation of responses to environmental documents referred from other agencies for review.
- B. County decision-making bodies may not delegate the following functions.
1. Approval of responses to public comments.

2. Review, consideration, and determination of the adequacy of a final environmental impact report or negative declaration prior to approving a project.
 3. Establishing findings required by Section 15091 of the State CEQA Guidelines.
 4. Making a statement of overriding considerations as required by Section 15093 of the State CEQA Guidelines.
- C. An advisory body such as the Planning Commission which is required to make a recommendation on a project to a decision-making body shall review and consider all pertinent environmental documents.
- D. Where a decision-making body such as the Planning Commission has discretionary authority over a project, the Planning Commission shall review all environmental evidence before approving or denying a project. Should the decision be appealed to the Board of Supervisors, the Board of Supervisors shall also review all environmental evidence before upholding or denying an appeal.

Section 3 - Review of Projects for Exemption

- A. As part of the preliminary review, each county department or agency shall determine whether a particular activity is exempt from CEQA. The determination of what is exempt can most appropriately be made by the particular County department head or director based upon analysis of the department's regulations and laws. Each department should make such determination either as a part of its implementing regulations, or on a case-by-case basis. Where it cannot be clearly determined that a particular activity is exempt, the matter may be referred to the Planning Commission for determination.
- B. In the absence of any discretionary provision contained in the relevant ordinance, it shall be presumed that the following actions are ministerial:
1. Issuance of building permits.
 2. Issuance of business licenses.
 3. Approval of final parcel and subdivision maps.
 4. Approval of individual utility service connections and disconnections.
 5. Issuance of sanitary well permits and septic tank permits.
 6. Issuance of agricultural burning permits.
 7. Approval of development plans.
 8. Zoning enforcement.

9. Approval of California Land Conservation Act contracts.

Other actions may be determined to be ministerial on a case-by-case basis.

- C. Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.
- D. An initial study may be prepared to determine if a project is ministerial.
- E. Categorical Exemptions are projects which, although not ministerial in nature, have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. The list of categorical exemptions can be found in Article 19 of the State CEQA Guidelines adopted by reference by the County of Stanislaus.

Section 4 - Environmental Review Determination

- A. It shall be the responsibility of any County department which proposes to carry out a project to review all projects, public or private, which that agency proposes to carry out or approve and which are not otherwise exempt from CEQA. The department shall prepare the initial study for each project after consultation with the departments of Planning and Community Development, Public Works, Environmental Resources, Fire Safety, County Counsel, and any other agency which the department determines may have relevant input. Those agencies shall respond within seven days of the consultation.
- B. The department shall determine if a project may have a significant adverse impact on the environment, and shall require the preparation of an environmental impact report for any project where such a determination is made. Any decision by the department to prepare an environmental impact report shall be finding unless the decision is appealed under the procedures established herein.
- C. When, after review of all pertinent information, the department finds that a project will not have any adverse impacts, or that all potential impacts have been mitigated, a negative declaration will be recommended. This will be a recommendation to the decision-making body which will consider the project itself. The decision-making body will officially consider the department recommendation prior to acting on the project. If, after considering the potential impacts of the project, the decision-making body determines that the project may have adverse effects, it may overrule the department and require preparation of an environmental impact report.

Section 5 - Appeals

A. Categorical Exemption Determination

Any decision that a project is categorically exempt may be appealed to the decision-making body at any time prior to the final decision on the project. The determination of the decision-making body shall be final.

B. Appeals of Negative Declaration

Any decision to recommend a negative declaration for a project, may be appealed to the Board of Supervisors prior to the expiration of the appeal period for the project. The appeal shall be in writing, explaining why an environmental impact report should be required, and shall be accompanied by an appeal fee in the amount set by resolution of the Board of Supervisors.

C. Appeals of Environmental Impact Report Requirement

When it is determined that the project requires the preparation of an environmental impact report to discuss significant effects, the applicant or designated representative has thirty (30) calendar days from the date of determination to either:

1. Modify the project to include mitigation measures which will reduce impacts to insignificant levels.
2. Submit the fees and information required to prepare an environmental impact report.
3. Appeal the requirement of an environmental impact report to the Board of Supervisors. The appeal shall be in writing, and shall present specific evidence as to why an environmental impact report should not be required. The appeal shall be accompanied by an appeal fee in the amount set by resolution of the Board of Supervisors.

If no mitigation measures, submission of fees and information, or appeal is made by the applicant within thirty (30) calendar days, the application shall be considered withdrawn.

D. Appeal Hearing

The Board of Supervisors shall hold a public hearing to consider all appeals of negative declarations and environmental impact reports. At the appeal hearing the Board shall consider the initial study and other evidence concerning the environmental effect of the project. After due consideration, the Board shall make an environmental determination.

1. If it is determined that the project will not have a significant effect on the environment or that the mitigation measures proposed will reduce all significant effects to an insignificant level, a Negative Declaration shall be prepared.

2. If it is determined that the project would have a significant effect on the environment which could be reduced to an insignificant level by added mitigation measures, the applicant shall be notified of the determination. Within ten (10) calendar days, the applicant shall incorporate said mitigation measures in the project or submit the fees and information necessary to prepare an environmental impact report. If no action is taken by the applicant within the ten (10) calendar-day period, the application shall be considered withdrawn.
3. If it is determined that the project will have a significant effect on the environment despite any mitigation measures, the applicant shall be notified that an environmental impact report is required. Within ten (10) calendar days of notification, the applicant shall submit the fees and information required for an environmental impact report or the application shall be considered withdrawn.

Section 6 - Preparation of the Draft Environmental Impact Report

Following a final determination that a project may have a significant effect on the environment, and that an environmental impact report (EIR) is required, the department responsible for preparing the EIR shall evaluate the magnitude of the project and the anticipated complexity of the EIR. Following the evaluation, the department shall either: (1) require the applicant to submit any information needed for EIR preparation, including a deposit toward the actual cost of staff preparation of the report; or (2) retain, at the applicant's expense, an environmental consultant to prepare the draft EIR.

During preparation of the EIR, the department head of the department with primary responsibility for the EIR may request other County departments to provide specific environmental impact information in their particular area of expertise. All County departments shall cooperate fully to provide accurate and timely information for inclusion in the draft EIR.

All costs associated with EIR preparation, including, but not limited to, meetings, field trips, hiring consultants, notifications, document review, printing and public hearings shall be paid by the project proponents. Prior to the County retaining a consultant, the applicant shall deposit with the department carrying out the EIR an amount determined by the director of that department to be sufficient to cover County costs. Prior to signing any contract for EIR preparation, the proponent shall deposit with the County the full amount of the contract cost for the preparation of the EIR. Proponents will be responsible for all County costs above the original estimate. Conversely, any excess money deposited will be returned to the proponents after final cost determination is made on the project application. All County expenses must be paid and received by the County prior to any decision being made by the Planning Commission and/or Board of Supervisors.

SECTION 7 - MITIGATION MONITORING AND REPORTING

A. POLICY STATEMENT

It is a policy of the County of Stanislaus to provide adequate monitoring of all measures required to mitigate potential impacts from development projects as required by Section 21081.6 of the California Public Resources Code.

Whenever a project is proposed for which changes are required or conditions imposed in order to mitigate identified impacts, a monitoring plan shall be adopted prior to approval of the project. This plan shall include the following:

1. Impact to be mitigated (only if the mitigation measure requires a change in the project or imposition of a condition.
2. Mitigation measure to be monitored including the required change or additional condition(s).
3. Method of monitoring or reporting including who will monitor or report, qualifications of the monitor, when the monitoring or reporting will be done, and need or frequency of any site visits.
4. The anticipated costs that will have to be paid by the applicant and the timing of the payment. Actual dollar amounts are not required, but the plan should include identification of the type of personnel or firms to be paid, the anticipated number of inspections, etc.

B. ROLES AND RESPONSIBILITIES

Planning Commission or Board of Supervisors. It shall be the responsibility of the Planning Commission, the Board of Supervisors, or any other County agency which approves a project to adopt a monitoring and/or reporting program when conditions of project approval have been added or the project changed in order to mitigate significant environmental effects.

Planning Director. It shall be the responsibility of the Planning Director to ensure preparation and adoption of the monitoring plan. In addition, the Planning Director shall coordinate the implementation of the plan.

Applicant. It shall be the responsibility of the applicant to submit to the County a draft monitoring plan, following consultation with all County and non-county agencies which will be involved in project monitoring.

C. FEE STRUCTURE

Drafting and Adopting a Monitoring Plan. The actual cost of drafting and adopting a monitoring plan shall be in addition to the application

fee for Environmental Review. The amount of the fee shall be established by the Planning Director based on weighted wage rates for County employees involved in preparation of the plan. In the case where additional expertise is needed to develop or review a monitoring plan due to the technical nature of the identified impact or mitigation measure, the applicant shall pay for the actual cost of hiring a person (firm) with the necessary expertise. Unless otherwise authorized by the Planning Director, this fee shall be paid prior to scheduling of public hearings for the adopting of the plan and approval of the project.

Monitoring or Reporting. The applicant shall be expected to pay the actual cost of the monitoring or reporting. The monitoring plan shall specify whether or not it will be necessary to hire any person or firm (at the applicant's expense) to conduct the monitoring and at what point the cost must be paid.

D. TIMING

Draft Monitoring Plan. Whenever a monitoring plan is required under Section A above, a draft monitoring plan will be attached to the initial study. When an EIR is required, the draft monitoring plan shall be made a part of the draft EIR.

Adoption of Monitoring Plan. A monitoring plan (either the draft plan or the draft plan as amended) shall be adopted prior to approval of any project requiring such a plan under Section A above. This adoption should normally be done concurrently with adoption of a mitigated Negative Declaration or an EIR.

Enforcement of Monitoring Plan. The enforcement procedure and timing of enforcement shall be included in each monitoring plan since situations vary from project to project. Generally, monitoring shall be completed and a written report submitted prior to any final approval of a project (e.g., prior to recording of a final map, prior to final inspection of a building, prior to acceptance of public improvements). In cases where the mitigation measures require ongoing, long-term monitoring, the frequency and length of the monitoring period shall be determined in the adopted plan.

E. MECHANICS OF MONITORING

Review of Monitoring Plan. During the public hearing process, the draft monitoring plan shall be reviewed by the advisory and/or decision-making body.

Adoption of Monitoring Plan. It shall be the responsibility of the decision making body to adopt such plan prior to project approval.

Relationship to Conditions of Approval. For projects which include mitigation measures that must be enforced by placing conditions on the approval of the project, these conditions shall be plainly listed as being imposed to mitigate environmental impacts.

Qualifications of Monitor. In all cases, the person or firm responsible for monitoring shall have sufficient expertise to determine whether or not the mitigation measure has been accomplished. If necessary, the County shall employ additional personnel to provide the level of expertise needed. Whenever an agency other than the County requests a mitigation measure be imposed as a condition of approval, that agency shall be responsible for determining the level of expertise needed for the monitor.

F. ENFORCEMENT

The objective of enforcement shall be compliance. Revoking approval, stopping construction, or taking any other action to prevent completion or operation of the project shall be the last resort and shall only be considered when it is clear that no other reasonable options exist.

Generally, it shall be the Planning Director's responsibility to coordinate monitoring and reporting to ensure enforcement.

All County offices shall cooperate fully in carrying out their specific monitoring and/or reporting responsibilities as required by each plan. Each office shall provide the Planning Director with written confirmation that impacts have been satisfactorily mitigated, or that long-term monitoring is proceeding in compliance with the adopted plan.

Whenever an agency other than the County requests a mitigation measure be imposed as a condition of approval, monitoring shall be considered complete and adequate upon written confirmation that the impact has been mitigated to the agency's satisfaction.

If, during monitoring, it is determined that the condition or change in the project is not being met so as to mitigate the identified impact, the following procedure shall be used:

1. The person or firm responsible for monitoring shall report (whether or not it is the normal time designated in the monitoring plan for reporting) to the Planning Director the facts surrounding the noncompliance.
2. Upon receipt of the monitoring report, the Planning Director shall place the report on the next available Board of Supervisors agenda and notify the applicant of this action. The Director shall also notify any persons who have requested such notification.
3. The Board of Supervisors shall consider the report and any information presented by the applicant and shall determine whether or not there is a violation of the project approval.
4. If no violation is found, the applicant shall be so notified in writing.

5. If a violation is found that can be corrected, the applicant will be notified of the needed correction in writing and will be given a reasonable period of time (normally 10 days) in which to correct the violation.
6. If a violation is found that cannot be corrected, or if the applicant fails to correct the violation according to Section 5 above, the County Counsel shall institute proceedings to stop work on the project and seek whatever legal remedies are available.

**STANISLAUS COUNTY
CEQA GUIDELINES AND PROCEDURES**

Amendment Adopted May 13, 2008

Section 1 - County Implementation of the Stanislaus County CEQA Guidelines and Procedures is amended to read as follows:

"The Stanislaus County Board of Supervisors, as the governing legislative body of the County, has hereby adopted, by reference, the State CEQA Guidelines (Cal. Code Regs, tit. 14, Chap. 3, § 15000 et seq.) for compliance with the California Environmental Quality Act and any subsequent revisions thereto, as permitted by Section 15022 (d) of those Guidelines. The Board has also established the following procedures for local implementation of CEQA to be followed by all organizational subdivisions of the County. These subdivisions may develop, and revise as necessary, office procedures and forms to implement their duties. For areas of CEQA responsibility not specifically addressed by these Stanislaus County procedures, the County will follow the text of the State CEQA Guidelines. The State Guidelines shall control and prevail in the event of any inconsistency between the State CEQA Guidelines and these County CEQA Guidelines and Procedures."

Section 2.A - Delegation of Responsibilities A of the Stanislaus County CEQA Guidelines and Procedures is amended to read as follows:

- "A. The County hereby delegates the following functions to its staff members to assist in the administration of CEQA, and, if any of the functions are performed by a project applicant or its consultant, staff shall oversee those functions:
- "1. Determination of whether a project is exempt.
 - "2. Conducting an initial study.
 - "3. Preparation and circulation of a Negative Declaration or Environmental Impact Report, including consultation with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of a project.
 - "4. Assuring adequate opportunity and time for public review and comment on the draft Environmental Impact Report or Negative Declaration.

- "5. Conducting public hearings.
- "6. Preparation of recommended responses to public comments.
- "7. Recommendation as to adequacy of an Environmental Impact Report.
- "8. Certification that the decision-making body has reviewed and considered an Environmental Impact Report or Negative Declaration.
- "9. Preparation and distribution of notices.
- "10. Filing of environmental documents with the County Clerk-Recorder and Office of Planning and Research.
- "11. Preparation of responses to environmental documents referred from other agencies for review."

Section 5.C - Appeals of Environmental Impact Report Requirements of the Stanislaus County CEQA Guidelines and Procedures is amended to read as follows:

"When it is determined that the project requires the preparation of an Environmental Impact Report ("EIR") to discuss significant effects, the applicant or designated representative has thirty (30) calendar days from the date of determination to initiate one of the following actions:

- "1. Modify the project to include mitigation measures which will reduce impacts to insignificant levels.
- "2. Proceed with preparation of an EIR in accordance with the method of preparation selected by the County pursuant to State CEQA Guidelines Section 15084 (d), and execute any documents or agreements that are necessary or required to proceed with the option selected by the County.
- "3. Appeal the requirement of an EIR to the Board of Supervisors. The appeal shall be in writing, and shall present specific evidence as to why an EIR should not be required. The appeal shall be accompanied by an appeal fee in the amount set by resolution of the Board of Supervisors.

"If the applicant or the applicant's designated representative does not initiate one of the specified actions within thirty (30) calendar days, the application shall be deemed withdrawn. Upon written request by the applicant or the applicant's designated representative, staff may, in it's

sole discretion, grant additional time to either modify the project to include mitigation measures to reduce project impacts, or to initiate preparation of an EIR."

Section 5.D - Appeal Hearing of the Stanislaus County CEQA Guidelines and Procedures is amended to read as follows:

"The Board of Supervisors shall hold a public hearing to consider all appeals of a decision to prepare a Negative Declaration or Environmental Impact Report ("EIR"). At the appeal hearing the Board shall consider the initial study and other evidence concerning the environmental effects of the project. After due consideration, the Board shall make a determination regarding the potential environmental impacts and take one of the following actions:

- "1. If it is determined that the project is not likely to cause a significant effect on the environment, or that the mitigation measure proposed for the project is likely to reduce all potentially significant impacts to an insignificant level, a Negative Declaration shall be prepared.
- "2. If it is determined that the project could have a significant effect on the environment which could be reduced to an insignificant level by added mitigation measures, the applicant shall be notified to either (a) incorporate said mitigation measures in the project, or (b) proceed with preparation of an EIR in accordance with the method of preparation selected by the County pursuant to State CEQA Guidelines Section 15084 (d), and execute any documents or agreements that are necessary or required to proceed with the option selected by the County. If the applicant or the applicant's designated representative does not initiate one of the specified actions within ten (10) calendar days, the application shall be deemed withdrawn.
- "3. If it is determined that the project could have a significant effect on the environment despite any mitigation measures, the applicant shall be notified to proceed with preparation of an Environmental Impact Report in accordance with the method of preparation selected by the County pursuant to State CEQA Guidelines Section 15084 (d), and execute any documents or agreements that are necessary or required to proceed with the option selected by the County. If the applicant or the applicant's designated representative does not initiate the required action within ten (10) calendar days, the application shall be deemed withdrawn."

The first paragraph of Section 6 - Preparation of the Draft Environmental Impact Report of the Stanislaus County CEQA Guidelines and Procedures is amended to read as follows:

"Following a final determination that a project may have a significant effect on the environment, and that an Environmental Impact Report ("EIR") is required, the department responsible for preparing the EIR shall evaluate the magnitude of the project and the anticipated complexity of the EIR. Following the evaluation, the department shall arrange for the preparation of an EIR in accordance with State CEQA Guidelines, Section 15084 (d)."