

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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LEGISLATIVE ANALYST REPORT

To: Supervisor Alioto-Pier
From: Budget and Legislative Analyst *JH m. Jone*
Date: August 4, 2010
Re: California Environmental Quality Act Appeals Processes in other California jurisdictions (Project 100150.2)

SUMMARY OF REQUESTED ACTION

Pursuant to your request, the following is the Budget and Legislative Analyst's survey of other California jurisdictions regarding their treatment of California Environmental Quality Act (CEQA) appeals, including appeals of Environmental Impact Reports (EIR's), Negative Declarations, and categorical and statutory exemptions.

BUDGET AND LEGISLATIVE ANALYST SURVEY AND RESPONSES

Your office requested a survey of other California jurisdictions to provide answers to the following questions:

1. What are the deadlines for appeals of EIRs, Negative Declarations, and exemptions?
2. Are administrative appeals allowed before an item is appealed to elected officials? Must a person have previously participated in administrative appeals to appeal to the elected officials?
3. Does the jurisdiction have a special procedure for appeals involving historic resources?
4. Is there a fee for appeals? If so, how much?

In order to conduct the requested survey, the Budget and Legislative Analyst contacted five cities in California: Los Angeles, Sacramento, San Bernardino, San Diego, and San Jose. Staff at three of these cities – Los Angeles, San Diego and San Jose – responded to our questions. We did not get responses from the other two cities, even through multiple calls were made to appropriate staff at each city. A review of municipal codes and websites for the selected jurisdictions provided some of the requested information for the cities of Sacramento and San Bernardino, as well as supplementary information for San Jose, San Diego and Los Angeles.

The following information is based on the results of our survey.

CEQA STATUTE BACKGROUND

A report by the San Francisco Planning Department submitted to Supervisor Alioto-Pier states the following regarding current CEQA law and San Francisco's implementation of the law:

"The California Environmental Quality Act (CEQA) requires local agencies to allow a CEQA appeal to the elected decision-making body if a non-elected decision-making body approves the CEQA document. In San Francisco, this means when the Planning Department or the Planning Commission acts on an environmental impact report (EIR), a negative declaration (neg dec) or a determination of exemption, appeals must be granted before the elected Board of Supervisors."¹

Since the State CEQA statute and related regulations do not specify a procedure for environmental determination appeals, some local jurisdictions have adopted their own procedures governing appeals timelines, fees, administrative appeal² requirements, and related matters.

San Francisco CEQA appeals procedures

Section 31.16 of the San Francisco Municipal Code establishes a timeline for filing of appeals of EIRs, stating that "A letter of appeal shall be submitted to the Clerk of the Board [of Supervisors] within twenty calendar days after the Planning Commission's certification of the EIR..." However, according to the report submitted by the Planning Department to Supervisor Alioto-Pier, as cited above, the San Francisco Municipal Code does not provide any procedures for appeals of Negative Declarations or categorical or statutory exemptions.

SURVEY RESULTS

In all jurisdictions, appeals generally move up the decision chain, so that an environmental determination made by a given jurisdiction's Planning staff or the Director of Planning may be appealed to that jurisdiction's Planning Commission, and environmental determinations made by a Planning Commission may be appealed to that jurisdiction's elected body. Several jurisdictions assess a filing fee for CEQA appeals.

San Jose

According to Mr. Darryl Boyd, Principal Planner with the City of San Jose, the CEQA provision that environmental determination decisions made by non-elected decision-making bodies are appealable to elected decision-making bodies has resulted in more CEQA appeals being heard by the San Jose City Council. However, Mr. Boyd states that the City does not receive many of these appeals; therefore the San Jose City Council does not hear many of these appeals as a result of the CEQA statute requirement.

According to Mr. Boyd, San Jose instituted changes to their CEQA appeals process in 2007 for Negative Declarations and EIRs. Title 21 of the San Jose Municipal Code establishes a "protest"

¹ San Francisco Planning Department Report, Administrative Code Text Change: "Appeals of Certain Environmental Determinations and Providing Public Notice", Hearing Date: May 27, 2010.

² "Administrative appeals" are defined in this document as appeals of decisions by either Planning staff or the Director of Planning that are appealed to either the Director of Planning or the Planning Commission before reaching an elected body.

process for appeals of Negative Declarations and a limited timeframe for appeals of both Negative Declarations and EIRs, as discussed in greater detail below.³ Title 21 does not include a process for appeals of projects determined to be exempt from environmental review.

According to Mr. Boyd, San Jose assesses a filing fee of \$100 per protest/appeal of both Negative Declarations and EIR determinations. The City's Code of Ordinances permits environmental determinations by hearing officers, the Planning Director, or the Planning Commission to be appealable directly to the City Council or, as appropriate, to the board of directors of the redevelopment agency.

Negative Declaration Protest Procedure

Title 21 of the City of San Jose Municipal Code permits any person to file a written protest no later than 5:00 p.m. on the third business day following: (a) an adoption of a Negative Declaration as part of a noticed public hearing by either a City decision-making or advisory body or (b) commencement of a project if the project is undertaken without any public hearing. Subsequently, the Planning Commission holds a public hearing on the protest to the Negative Declaration. If the Planning Commission upholds the protest and finds that the applicant should prepare a more extensive EIR, then the filing fee is refunded to the protester. If the Planning Commission instead upholds the action of the Director of Planning and rejects the protest, then the Negative Declaration becomes final and the filing fee remains with the Planning Department. After this process is completed, decisions to approve Negative Declarations are appealable to the City Council.

Environmental Impact Report Appeals Procedure

Title 21 of the City of San Jose Municipal Code limits the timeline for appeal of the Planning Commission's final certification of an EIR to no later than 5:00 p.m. on the third business day following the EIR's certification. Title 21 requires that EIR appeal hearings will be conducted by the City Council when the City of San Jose is the lead agency. Mr. Boyd stated that the City does not get many EIR appeals and that the most recent EIR appeal was for the proposed Oakland Athletics baseball stadium, which was certified in 2007 by the San Jose Planning Commission⁴ and approved in June of 2010 by the San Jose City Council.⁵

Historic Resources Appeal Procedure

According to Mr. Boyd, appeals of decisions on historic preservation permits are submitted directly to the City Council and do not go through the City's Planning Commission.

Los Angeles

The City of Los Angeles has no formal CEQA appeals process in place at this time. According to City of Los Angeles Deputy City Attorney Tim McWilliams, the City of Los Angeles is currently considering legislation that would make changes to CEQA appeals procedures to allow

³ Title 21 of San Jose's Municipal Code is available online at http://www.sanjoseca.gov/planning/eir/envs_code.pdf

⁴ San Jose Redevelopment Agency Memorandum to the City of San Jose Mayor and City Council, March 27, 2009. Available online at <http://www.sjredevelopment.org/inforMemos/Athletics%20Stadium%20in%20SJ%203-27-09.pdf>

⁵ Tracy Seipel, "San Jose city council approves environmental impact report for proposed downtown baseball stadium," *San Jose Mercury News*, June 16, 2010. Available online at http://www.mercurynews.com/bay-area-news/ci_15306205?nclink_check=1

for, among other things, a limit on the number of days after a CEQA determination is made in which an appeal can be filed. Deputy City Attorney McWilliams advised that the legislation under consideration is subject to change as the drafting process for this legislation continues. Deputy City Attorney McWilliams further advised that the present Los Angeles CEQA appeals process is "ad hoc" and that the legislation under consideration will attempt to make changes that would formalize a more consistent appeals process, although what those changes will be is a subject of debate that does not yet have final agreement.

Historic Resources Appeal Procedure

With regard to historic resources, while Los Angeles has a Cultural Heritage Commission, Deputy City Attorney McWilliams advises that CEQA appeals that involve historic resources are treated in a similar fashion to all other CEQA appeals.

San Diego

According to Ms. Terri Bumgardner, Senior Planner with the San Diego Planning Department, and a review of the City's Municipal Code, the City of San Diego sets a deadline for filing appeals of Negative Declarations and EIRs approved by the Planning Commission at 10 calendar days from the date of environmental determination and 15 days for categorical and statutory exemptions or any other environmental determinations by staff. The project associated with the environmental determination must first have exhausted any appeals to lower level decision-makers before an environmental determination appeal may be filed to City Council. Appeals may be filed by any "interested party," as determined by the Planning Director based on information provided by the appellant. The City does not have a separate CEQA appeals process for historic resources, and there is \$100 fee assessed for CEQA appeals.

Other Jurisdictions Considered

The Budget and Legislative Analyst made several attempts to contact appropriate staff in the cities of Sacramento and San Bernardino for this survey. While in-person responses were obtained from the cities of San Jose, San Diego and Los Angeles, the following information was found online.

Sacramento

It appears that the City of Sacramento Development Services Department assesses an environmental review appeal filing fee of \$179.⁶ In addition, the City's website provides a list of fees for appeals of planning, design review, and preservation review decisions, which vary from \$0 to \$500 for third-party appeals, dependent upon the City personnel or governing body whose decision is being appealed.⁷

San Bernardino

A review of the City of San Bernardino's municipal code on the City's website shows that San Bernardino provides a deadline of 15 calendar days from the date of an environmental decision to file an appeal. All decisions by the Director of Planning or the City's Development Review

⁶ City of Sacramento Director of Planning decision appeals form is available online at http://www.cityofsacramento.org/dsd/forms/planning/documents/DSD-0107_Planning_Director_Appeal_Form.pdf

⁷ City of Sacramento fee details chart is available online at <http://maps.cityofsacramento.org/feetool/one-deets-std.jsp?id=122>

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Commission may be appealed first to the City Planning Commission, and decisions of the Planning Commission may be appealed to the City Council. It does not appear that San Bernardino charges a fee for CEQA appeals.⁸

The City does have a Historic Preservation Commission which implements the City's process for determining sites that have historic significance. This Commission is authorized to serve "in an *advisory capacity* regarding to the Planning Commission in making recommendations relating to the designation, preservation and protection of historical properties."⁹ [emphasis ours]

cc: Clerk of the Board

⁸ City of San Bernardino Municipal Code available online at http://www.ci.san-bernardino.ca.us/residents/municipal_code.asp

⁹ City of San Bernardino Municipal Code establishing the Historic Preservation Code (Section 2.23) is available online at <http://www.ci.san-bernardino.ca.us/civica/filebank/blobdload.asp?BlobID=2544>