

CHAPTER 10 - ENVIRONMENTAL REVIEW PROCEDURES

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10.010 - Purpose

The purpose of this article is to identify the roles and responsibilities of the District in implementing the California Environmental Quality Act (CEQA), California Public Resources Code Sections 21000 et seq., and the State CEQA Guidelines. The District is responsible under CEQA for acting as lead agency with respect to: all District projects within San Luis Obispo County jurisdiction; and all private and District projects within its granted State-owned tidelands encompassing the whole of San Luis Obispo Bay. The District is also responsible under CEQA for acting as a responsible agency for projects undertaken by another agency but requiring District action. The intent of these regulations and procedures is to establish a systematic application review process, equitable fees, and suitable definitions and criteria for District use.

10.020 - CEQA Guidelines Incorporated by Reference

The CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et. seq.), including definitions and appendices, as adopted and amended, are hereby incorporated by reference as though fully set forth here. The criteria, purpose, and objectives of the CEQA Guidelines shall apply to activities undertaken by the Port San Luis Harbor District that are subject to CEQA, with respect to the review of projects and preparation of environmental documents (exemptions, initial studies, negative declarations, and draft and final environmental impact reports (EIR's)).

10.030 - Determination of CEQA applicability

Whenever the District proposes to carry out or approve an activity that may constitute a project as defined by the CEQA or the Guidelines, the Environmental Coordinator shall review the activity to determine whether:

- A. It is not a project as defined by Section 21065 of the Act or Section 15378 of the Guidelines;
- or
- B. It is a project, but is exempt from CEQA because it is either:

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- (1) Statutorily exempt pursuant to CEQA Section 21080(b) and Article 18 of the Guidelines; or
 - (2) Categorically exempt pursuant to Section 21084 of CEQA and Article 19 of the Guidelines; or
- C. It is a project that is not exempt, but the environmental coordinator can determine with certainty that there is no possibility that the activity in question may have a significant effect on the environment; or
- D. It is a project that requires an Initial Study and/or an EIR pursuant to this article. When it can be seen clearly that an EIR will be required for the project, the Environmental Coordinator may proceed according to Section 10.200 without further review.

10.040 - Exemptions from CEQA

This section identifies the types of projects undertaken by the District that normally are exempt from CEQA, and the nature of their exemptions. Activities of the District not listed in this section shall be subject to an environmental determination, unless the Environmental Coordinator determines that an activity not listed here is substantially similar to an activity that is listed.

- A. Statutory exemptions. The following activities of the District are deemed to be statutorily exempt from the provisions of CEQA, pursuant to CEQA Section 21080(b) and Article 18 of the Guidelines:
- (1) Emergency projects: Emergency projects as defined by Guidelines Section 15269:
 - (a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster, where the Governor has proclaimed a state of emergency; or
 - (b) Emergency repairs to public service facilities necessary to maintain service; or
 - (c) Specific actions determined by the Harbor Manager to be necessary to prevent or mitigate an emergency.
 - (2) Ministerial acts. The following approvals and entitlements granted by the District are considered ministerial actions pursuant to CEQA Section 21080(b)(1) and Guidelines Section 15268:
 - (a) Construction permits pursuant to Article 4 of this chapter.
 - (b) Dry storage permits for boats, gear, and construction equipment.
 - (c) General work orders.
 - (d) Mooring permits.
 - (e) Overnight parking permits.
 - (f) Ways permits.

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- (3) Projects that are disapproved: Projects that are denied, disapproved, or otherwise rejected by the Harbor District.
- (4) Setting of fees. District ordinances or resolutions setting fees for District services are statutorily exempt if the fees and the action adopting them satisfy the provisions of CEQA Section 21080(b)(8) (Rates, Tolls, Fares).

B. Categorical exemptions. The following activities of the District (including the approval of permits allowing such activities by private parties) are deemed to be categorically exempt from the provisions of CEQA, pursuant to CEQA Section 21080(b)(10) and Article 19 of the Guidelines:

- (1) Existing facilities. As provided by Guidelines Section 15301 for Class 1 exemptions, the operation, repair, maintenance, or minor alteration of or additions to existing structures, facilities, mechanical equipment, topographical features, or landscaping, involving negligible or no expansion of use beyond that previously existing.
- (2) Replacement or reconstruction. As provided by Guidelines Section 15302 for Class 2 exemptions, the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.
- (3) New construction. As provided by Guidelines Section 15303 for Class 3 exemptions, construction or location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; the limited extension of utility services to serve such construction; and related accessory structures. For the purposes of this exemption, small structures mean those designed for an occupant load of 10 persons or less.
- (4) Minor alterations to land and temporary uses. As provided by Guidelines Section 15304 for Class 4 exemptions, minor alterations in the condition of land, water, and/or vegetation that do not involve the removal of mature, scenic trees. Examples include backfilling where the surface is restored, and maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.
- (5) Land use regulations, protective actions. As provided by Guidelines Sections 15305, 15307 and 15308 for Class 5, 7 and 8 exemptions, minor alterations in land use limitations in areas with average slopes less than 20 percent which do not result in any changes in land use or density, and other actions taken by the District to assure the maintenance, restoration, or enhancement of a natural resource or the environment where the regulatory process involves procedures for protection of the environment.
- (6) Minor accessory structures. As provided by Guidelines Section 15311 for Class 11 exemptions, construction or placement of minor structures accessory to existing facilities, including but not limited to on-premise signs, small parking lots, and the placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time.

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(7) Other exempt activities. Categorically exempt activities of the District also include any other activities listed as exempt by Article 19 of the Guidelines.

- C. Notice of Exemption. When the Environmental Coordinator determines that an activity is exempt from CEQA, and after the project is approved or the District determines to carry it out, the Environmental Coordinator may file a Notice of Exemption with the County Clerk and may post the Notice of Exemption in the District offices for public review. An applicant may also file this notice per the stipulations as set forth in CEQA Section 15062. Such notice shall include a brief description of the project, statement of exemption and a reference to the section which it is found exempt, and a brief statement of reasons to support the finding. The posting of the Notice of Exemption commences a 35-day statute of limitations period on legal challenges to the District's decision that the project is exempt from CEQA. If no such notice is filed and posted, a public informational notice shall be placed in the Harbor Office and a 180-day statute of limitations will apply.

10.100 - Initial studies, negative declarations, and mitigated negative declarations

- A. Purpose: This section provides procedures for Initial Studies, and issuing negative declarations. An initial study is intended to determine whether a project that is not exempt from CEQA as set forth in Section 10.040 may have a significant effect on the environment and, thus, whether an EIR, or a negative declaration or a mitigated negative declarations must be prepared.
- B. District projects. When a non-exempt project is to be carried out by the District, the Harbor Manager shall designate a staff member other than the Environmental Coordinator to complete the Environmental Description Form (Section 8.130(A)(4)) for the project. The Environmental Coordinator shall prepare such information as may be needed to constitute an initial study pursuant to State CEQA Guidelines Section 15063.
- C. Private projects - Waiver of initial study. An applicant may waive the initial study process where it is agreed that the project may have a potential significant effect on the environment. A written waiver shall be submitted using the form provided by the Harbor Manager, which constitutes the applicant's agreement to proceed with preparation of an EIR without an initial study or environmental determination.
- D. Conduct of initial study, time limits for preparation. An initial study shall be conducted as set forth in Guidelines Section 15063, and as provided by this section. The District shall determine whether to prepare a negative declaration, a mitigated negative declaration or an environmental impact report within 30 days of acceptance of an application as complete (Section 8.130(C)). A negative declaration, or a mitigated negative declaration must be prepared and adopted within 180 days.
- E. Public notice of intent to adopt a negative declaration or a mitigated negative declaration. When the Environmental Coordinator prepares a proposed negative declaration, or a mitigated negative declaration pursuant to Guidelines Sections 15070 and 15071 after conducting an initial study, the Environmental Coordinator shall provide public notice within a reasonable period of time of the intention of the District to adopt a negative declaration, or a mitigated negative declaration as follows:
- (1) A copy of the proposed negative declaration, or mitigated negative declaration shall be sent to the applicant, to every responsible agency and trustee agency concerned with the project, and every other public agency with jurisdiction by law over resources affected by the project; and,

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the notice shall contain:

- (a) A brief description of the proposed project and its location,
 - (b) The starting and ending dates for the review period during which the District will receive comments,
 - (c) The date, time and place of any scheduled public hearing to be held by the Board on the proposed project,
 - (d) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration may be obtained during normal business hours.
- (2) Notice shall be given to all persons who have previously requested such notice; and
 - (3) Notice shall be published at least one time by the District in a newspaper of general circulation in the area affected by the proposed project (such notice may be combined with any other public notice required by law); and
 - (4) The agenda in which the Board or the Harbor Manager considers the project shall contain a notice of the proposed negative declaration.

F. Public review of negative declaration or mitigated negative declaration. A draft negative declaration or mitigated negative declaration shall be distributed to all responsible agencies (including the California Coastal Commission), trustee agencies, and federal agencies involved in funding or approving the project, the applicant, and any person who has requested such notice, for a public review for a period of at least 20 days before adoption by the District. Action to adopt a negative declaration or mitigated negative declaration shall precede action to approve a project. Where notice is provided to a state agency pursuant to paragraph (1) above, the notice shall be provided at least 30 days before the item is scheduled for consideration by the Board unless a shorter time period is approved by the State Clearinghouse.

G. Determining significant effect. A determination of whether a project may have a significant effect on the environment shall be made by the Board where a discretionary action or permit is to be approved by the Board, and by the Harbor Manager, where a discretionary action or permit is to be approved by the Harbor Manager. The Board may adopt in whole or in part, modify, or reject the recommendation of the Environmental Coordinator and any Committee.

- (1) When the Board or Harbor Manager determines that a project will not have a significant effect pursuant to CEQA and the Guidelines, a proposed negative declaration shall be adopted pursuant to subsection H., below.
- (2) When the Board or Harbor Manager determines that a project could result in potentially significant effects on the environment, but:
 - (a) Revisions have been incorporated into the project and agreed to by the applicant before the negative declaration has been released for public review, and
 - (b) There is no evidence before the Board or Harbor Manager that the project, as revised, may have a significant effect on the environment.

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A mitigated negative declaration shall be adopted pursuant to subsection H., below.

- (3) When the Board or Harbor Manager finds that a project may have a significant effect, an EIR shall be prepared pursuant to Section 10.200, provided that where the Harbor Manager finds that a project may have a significant effect, he or she shall refer a recommendation to the Board that preparation of an EIR be required, and the decision whether to require an EIR shall be by the Board.

- H. Adoption of negative declaration or mitigated negative declaration. The Board or Harbor Manager shall consider the negative declaration or mitigated negative declaration together with all comments received during the public review period and adopt the negative declaration or mitigated negative declaration if it finds that there is no substantial evidence that the project will have a significant effect on the environment. The negative declaration shall be prepared for filing, and a copy of the negative declaration, including the initial study, shall be posted for at least 10 days in a public place in the District's offices at Port San Luis. If the Board modifies any part of the Environmental Coordinator's recommendations, the modified negative declaration shall be sent to all persons previously receiving the recommendation pursuant to subsection E. of this section. Adoption of a mitigated negative declaration shall include a program for the monitoring and implementation of all adopted mitigation measures in accordance with Public Resources Code Section 21081.6.
- I. Action to approve or deny a project. The Board or manager shall take an action to approve or deny a project for which a negative declaration or mitigated negative declaration has been prepared within 60 days from the date of adoption of the negative declaration or mitigated negative declaration by the Board or Manager. Upon mutual written consent of the applicant and the District, the time period for final action may be extended once for a period not to exceed 90 days. Action to adopt a negative declaration or mitigated negative declaration and the action to approve or deny a project may occur at the same public meeting or hearing, provided that the time limits and public notice requirements prescribed by this section are complied with, and provided that any action to adopt a negative declaration or mitigated negative declaration must precede project approval.

10.200 - Environmental Impact Report process

- A. EIR Process Initiation. Where it is determined that an EIR shall be prepared pursuant to subsection 10.100(F), the Environmental Coordinator shall prepare a recommended scope of work for the EIR. Where requested by any Commissioner or at the discretion of the Environmental Coordinator, the scope of work may be reviewed and approved by the Board prior to completion. For any private project, the applicant shall be consulted in preparing the scope of work. An applicant may, or if required by the Environmental Coordinator shall, submit additional information to aid in the preparation of the EIR. The Environmental Coordinator shall determine how and to what extent the applicant's information will be used.
- B. Notice of Preparation. The Environmental Coordinator shall complete a Notice of Preparation and attach the initial study, and distribute the Notice of Preparation to all responsible agencies, trustee agencies, and federal agencies involved in funding or approving the project, the applicant, and any person who has requested such notice. The contents of the notice shall include:
 - (1) A description of the project,
 - (2) The location of the project, and
 - (3) The probable environmental effects of the project.

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The initial study may be used to satisfy the content requirements described above. The Notice of Preparation shall be sent by certified mail or such other method which provides a record that it was received by the responsible, trustee or federal agency, or such other interested party. When one or more state agencies are identified as responsible or trustee agencies, the Environmental Coordinator shall send the Notice of Preparation to the State Clearinghouse. The scope of work may be revised based upon comments from such agencies, or from the public.

- C. EIR Scoping Process. The EIR shall be prepared either by District staff or by a consultant under contract with the District. After receiving comments from the responsible or trustee agencies or any Federal agency, or not later than 30 days after issuing the Notice of Preparation, the Environmental Coordinator shall either initiate preparation of the EIR or engage a consultant to perform the work.
- D. Consultant Selection. The Environmental Coordinator shall maintain a list of qualified consultants for preparation of environmental documents. Where a consultant is to be selected, the Environmental Coordinator shall issue requests for proposals to qualified consultants and obtain estimates of fees and time for completion of the EIR, as well as technical approach to the work required. For any private project, the applicant may be consulted as to any preference among the qualified consultants submitting estimates. The Environmental Coordinator shall recommend to the Board the consultant who represents the best combination of reasonable fees and qualified performance. Consultant contracts shall not be awarded to any consultant that has any other involvement in the same project or with nearby projects where a conflict of interest might be reasonably alleged. The Environmental Coordinator shall be satisfied that any consultant preparing an EIR can provide an independent, objective, and unbiased document.
- E. EIR Contents. The content of an EIR shall be as required by CEQA and the Guidelines.
- F. Public Notice of Availability of a Draft EIR. A Notice of Completion of a Draft EIR shall be filed with the Office of Planning and Research pursuant to Section 15085 of the Guidelines. A Notice of Completion shall include:
- (1) A brief description of the project,
 - (2) The project location,
 - (3) The address where copies of the draft EIR are available, and
 - (4) The period during which comments on the draft EIR will be received.

When an EIR will be distributed through the State Clearinghouse, the cover form required by the Clearinghouse will serve as the Notice of Completion.

Public notice of the availability of a draft EIR shall be provided at the same time the Notice of Completion is sent to the Office of Planning and Research. Notice shall be given by at least one of the following procedures:

- (1) Publication at least one time in a newspaper of general circulation in the area affected by the project,
- (2) Posting of a notice on and off the site in the area where the project is proposed,
- (3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located.

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- (4) Direct mailing to any individual that has requested to be noticed.

Such notice shall contain the following:

- (a) A brief description of the project and its location,
- (b) The starting and ending dates for the review period during which comments will be received,
- (c) The date, time and place of scheduled public meetings or hearings on the proposed project, when known,
- (d) A list of the significant environmental effects to the extent such effects are known,
- (e) The address where copies of the draft EIR may be obtained during normal business hours.

The Notice of Availability shall be posted in the office of the County Clerk for a period of at least 30 days. The public review period for a draft EIR shall be not less than 30 days nor should it be longer than 60 days. When a draft EIR is submitted to the State Clearinghouse for review by State agencies, the public review period shall be not less than 45 days, unless a shorter period, but not less than 30 days, is approved by the State Clearinghouse.

- G. Public Hearing on a Draft EIR/Preparation of Final EIR. The District shall hold a public hearing on any project for which a Draft EIR has been prepared in order to obtain public comment of the adequacy of the Draft EIR. The Environmental Coordinator or his/her designee shall respond to all comments on environmental issues from persons who reviewed the Draft EIR, and shall prepare, or cause to be prepared, a Final EIR pursuant to Section 15088 and 15089 of the Guidelines.
- H. Certification of Final EIR. The final EIR shall be considered by the Board and any Committee reviewing the project, and shall be certified by the Board prior to approval of the project pursuant to Sections 15090-15093 of the Guidelines. The final EIR shall be completed and certified within one year of acceptance of an application as complete (Section 8.130(C)). Upon mutual consent of the applicant and the harbor District, the one year time period may be extended once for a period not to exceed 90 days. The applicant shall provide copies of the certified EIR to all responsible agencies.
- I. Action to approve or deny a project. An action to approve or deny a project shall be made by the Board or harbor manager within 180 days of certification of a final EIR as provided in H., above. Upon mutual written consent of the District and the applicant, the time period for final action may be extended no more than once for a period not to exceed 90 days.
- J. Notice of Determination. Within five business days after the District approves or determines to carry out a project for which a Final EIR is certified, the Environmental Coordinator shall file a Notice of Determination with the County Clerk and, where the project required review by a state agency, with the Office of Planning and Research, pursuant to Section 15094 of the Guidelines. Filing of a Notice of Determination starts a 30 day statute of limitations for legal challenges to the Board or Harbor Manager's action to approve a project for which a final EIR has been prepared and certified.

10.210 - Combined hearings

The public hearings required by this article for adoption of a negative declaration or for consideration of a Draft EIR and certification of a Final EIR may be combined with the public hearings required by Chapter 8 of this code for land use permits.

Simplified CEQA Flow Chart

