

CITY OF SAN JOSE
Policy PL-300
Environmental Review Procedures

March 21, 2025

This policy revises and clarifies changes instituted by Planning Division management regarding environmental review in the letter from Rosalynn Hughey, Director of Planning, Building and Code Enforcement (PBCE) dated January 17, 2020 (Policy PL-300). This policy applies to applicants, consultants, and City staff.

1. City List of Approved Environmental Consultants (for private projects)

The City established the City List of Approved Environmental Consultants (List) which is posted to the PBCE website ([link](#)). For private projects, staff are to provide a link to the List to applicants who contact the Planning Division and/or file an application that requires technical analysis under the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). Applicants must choose a consultant from the List and contract directly with the consultant. Staff cannot recommend a consulting firm to an applicant. However, if an applicant requests a recommendation, staff may provide the names of at least three consultants from the List.

2. Environmental scope of work review

Once the applicant selects a consultant, the consultant shall submit a draft Scope of Work to the Principal and Supervising Planner contacts on the City's environmental review website ([link](#)). The Principal Planner and/or Supervising Planner will assign the scope of work for review to a planner. The applicant will be invoiced for staff time to review the scope of work based on the following procedures:

- If there is an active development application on file, the assigned planner will track time and invoice time spent based on the current fees in the Planning Fee Schedule.
- If there is no active development application on file, the assigned planner will send the applicant an invoice to cover staff time to review and approve the scope of work typically a base fee of three hours of staff time at the current Planning hourly rate, with additional hours invoiced if needed). **The planner will not start their review of the scope of work until the scoping fees are paid.**

For guidance on tasks to consider in a Scope of Work, please see the Scope of Work Guidelines for Environmental Consultants (Policy PL-308).

3. Environmental Review Schedule Coordination and Maintenance

The consultant maintains and updates the project environmental review schedule with tentative dates to key milestones (i.e., circulation, response to comments, and public hearings) agreed upon in the kick-off meeting with City applicant, and consultant. The schedule should assume City review times consistent with the City Target Review Times for the type of environmental review document being prepared (Appendix A to the Scope of Work Guidelines for Environmental Consultants, Policy PL-308) unless different target review times

are agreed upon in advance at the kick-off meeting. The consultant will update the schedule regularly based on communications with the Planning staff and applicant. Any changes to the schedule must be approved by Planning staff. Consultant must check with the assigned planner on City's standard review times.

The assigned planner will review the scope of work and send the consultant comments. Note that this review is based on information provided with the scope of work, and staff direction could change if new information is provided or the project changes.

4. Coordination between applicants, consultants, and Planning staff

The applicant is responsible for contracting directly with the selected consultant and paying all consultant invoices. Consultants work as an extension of Planning staff and take direction from Planning staff. Applicants may coordinate separately with consultants to review the draft environmental review documents. Knowing the conclusions of the environmental analysis of their projects provides applicants with predictability and certainty and enables them to design their projects to minimize impacts prior to submitting those documents to the City.

Any draft documents that are shared between the consultant and applicant must be marked as "Administrative Draft" and any applicant input on the document must be clearly marked. The City, as the Lead Agency under CEQA and the Responsible Entity under NEPA, has sole responsibility for the integrity of all City environmental documents and is not obligated to consider applicant input if it results in a real or perceived conflict of interest. The conclusions in drafts are not considered final until Planning staff have reviewed and confirmed the analysis as technically complete. Consultants and staff have clearly defined responsibilities to ensure the technical integrity and completeness of CEQA and NEPA documents, in full compliance with the CEQA statutes and implementing Guidelines and the appropriate NEPA implementing guidelines.

Environmental Consultants

Consultants preparing environmental review documents for projects in the City must not allow applicants to control or compromise the conclusions and content of the environmental studies/analyses for their projects. If there are disagreements or concerns raised by the applicant or consultant, these must first be discussed in a meeting with the applicant, consultant, and Planning staff. The goal of this meeting will be to resolve the concern at the Planning staff level. If the concern cannot be resolved at the Planning staff level, Planning management will coordinate with the involved parties to resolve the concern.

Planning staff will hold consultants to strict ethical and professional standards during the CEQA and NEPA review process. Consultants that submit documents which demonstrate undue influence of the applicant or otherwise violate ethical or professional standards will be subject to disciplinary action, up to and including removal from the City List of Approved Environmental Consultants (see Consequences of non-performance, below).

Planning Staff

Planning staff must review all environmental documents prepared by consultants to ensure that they reflect the independent judgment of the City prior to presenting the analyses to decision-makers. If Planning staff are not satisfied with the completeness, thoroughness, integrity, or technical adequacy of the analysis, Planning staff will return the documents to the consultant for additional work and/or the documents will be subject to peer review at the applicant's expense see section on Consequences of non-performance).

5. Determination of appropriate level of CEQA documentation

As the CEQA Lead Agency, only Planning staff would determine the appropriate CEQA clearance document for all projects. The type of CEQA document needed for a project shall not be assumed or pre-determined without going through the basic CEQA preliminary evaluation process pursuant to Sections 15060 through

15065 of the CEQA Guidelines. This includes a determination of whether an action is discretionary/subject to CEQA, review of the project's applicability for exemption, and/or preparation of an initial study or EIR. Such process and documentation shall be reviewed and confirmed by a Principal Planner and/or Supervising Environmental Planner.

The preliminary CEQA determination or a request for additional information to allow staff to make a preliminary CEQA determination will typically be provided with Planning's 30-Day letter. Questions about the CEQA determination or request for additional information should be addressed to the project's Environmental Project Manager. Disagreements with Planning staff's preliminary CEQA determination shall be discussed in a meeting with the consultant, applicant, and Planning staff. If the disagreement is not resolved, then the Director of Planning, Building and Code Enforcement has final authority in determining the appropriate CEQA clearance for a project.

6. Consequences of non-performance

Consultants must prepare documents that are accurate, thorough, and free of undue influence by the project applicant. The City has responsibility to maintain the integrity of published environmental review documents.

Documents with inaccurate analysis or undue influence by the applicant

If Planning staff finds that a consultant submits documents which are inaccurate or appear to have been unduly influenced by the applicant or other parties, the City reserves the right to reject the document and send a warning letter stating reason(s) why the project is rejected. Planning staff may also request a peer review of some or all of the document and supporting technical analysis. The peer review must be conducted by another consultant on the City List of Approved Environmental Consultants. The applicant is responsible for retaining the new consultant and paying all costs associated with the peer review. The results of the peer review may require additional changes to the environmental document, up to and including a requirement that the environmental review process re-start with the new consultant.

Incomplete or inadequate environmental documents

If Planning staff determines that a consultant submitted an incomplete or inadequate environmental document, the City reserves the right to return the document to the consultant without a full review. Examples include but are not limited to documents submitted without proper quality assurance/quality control (QA/QC) and incomplete documents missing one or more sections.

Incomplete or inadequate documents will be returned to the consultant with a warning letter stating the reason(s) the document is rejected. The review will not count as a round of review. Planning staff will notify the applicant that City review of the administrative draft is not proceeding due to deficiencies in the consultant submitted document and the schedule will need to be revised to reflect delays in the rounds of review.

Notwithstanding the City's discretion to determine if an environmental review document is inadequate, inaccurate or the product of undue influence, failure to do so for environmental documents that are later found by a court to be inadequate, inaccurate, or the product of undue influence does not confer liability onto the City.

Removal from the City List of Approved Environmental Consultants

A consultant that receives three or more warning letters for any of the reasons stated above within a three-year period will receive a warning letter from the Director of Planning, Building and Code Enforcement. This letter will state that due to non-performance, the consultant risks being removed from the City's List of Approved Environmental Consultants. If the consultant again submits an inaccurate or inadequate environmental document within one year after the Director's warning letter, the consultant shall be removed from the City's List of Approved Environmental Consultants.

Consultants removed from the List must wait until the next Request for Qualifications to update the List to submit a new Statement of Qualifications. If the consultant is successful in meeting the scoring criteria in the Request for Qualifications, they will be placed on the updated List.

Sincerely,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Christopher Burton, Director
Planning, Building and Code Enforcement