CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor

Report to the City Council
City of San José

ENVIRONMENTAL REVIEW FOR NEW DEVELOPMENTS: BETTER PROJECT MANAGEMENT AND REVIEWING RESOURCES CAN IMPROVE THE CEQA PROCESS

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
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Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Environmental Review for New Developments: Better Project Management and Reviewing Resources Can Improve the CEQA Process

New developments in San José are reviewed to consider how the project affects the surrounding environment. The California Environmental Quality Act (CEQA) is the primary piece of legislation that governs environmental review in San José. CEQA requires agencies to provide information to the public about environmental impacts of new development and identify ways to potentially mitigate those impacts, where possible. Agencies must evaluate a variety of impacts, such as air quality, biological and cultural resources, traffic, and others.

These reviews are led by a team in the City's Department of Planning, Building and Code Enforcement (PBCE). The CEQA review process is complex, involving multiple City teams as well as the applicant and a third-party environmental consultant. Environmental impact reports, the most thorough type of analysis that may be required, can take almost two years to complete. In an auditor survey of environmental review customers, timeliness and communications around the length of the review process were both noted as concerns.

The objective of this audit was to assess the time required to complete the City's CEQA review process. This audit was requested by a councilmember.

Finding 1: Improved Internal Processes Can Help Manage Environmental Reviews. The CEQA process is lengthy and requires coordination and communication among many different stakeholders. Within PBCE's Planning Division, planners on the entitlement team handle the overall entitlement process (which involves ensuring projects adhere to applicable plans, codes, guidelines, and policies) while the CEQA team handles the environmental review. We found:

- For a new development, the environmental review and entitlement processes occur concurrently and are generally led by two different planners, the entitlement planner and CEQA planner.

RECOMMENDATIONS:

To improve the management of CEQA projects, PBCE should:

→ Expand the model for planners to handle both the entitlement and environmental review processes

- Because of the complexity of projects and the long timelines, coordination can be challenging as there are not standard procedures around formal information sharing, holding regular meetings, or establishing defined timelines for all projects.
- The timeliness of the environmental review process is not currently measured against goals or targets. The City's integrated permitting system could facilitate measuring timeliness of the process, but it is not used consistently in this manner.
- Other jurisdictions have benefited from standardizing processes with tools or templates for routine activities. In the City, these tools are more limited.
- The City's public projects may require environmental review; however, other departments may not be well aware of the CEQA process. This can result in delays.

→ Develop standard project management procedures around information sharing, timelines, and other areas

→ Set performance targets for CEQA reviews, and improve data entry to allow measurement of progress toward those targets

→ Update and develop tools and templates to standardize routine processes

→ Educate City staff in other departments about the CEQA process

Finding 2: Better Management of Consultants Can Help Keep Projects on Track. Applicants hire environmental consultants, who prepare the bulk of the analysis that drive environmental reviews. In 2019, the City created a list of approved consultants through a request for qualifications process; however, this list is optional, and the City does not have much control over which consultants work on environmental reviews. We found:

- Environmental consultants are often working on projects for long periods of time, but staff do not regularly track how work is progressing.
- According to staff, the familiarity with the City and the quality of work varies among consultants.
- Since the establishment of the optional list, the median length of time that approved consultants took to complete negative declarations or mitigated negative declarations was three months shorter than non-approved consultants (though the number of projects is limited and projects vary in complexity).
- Though staff has prepared draft guidelines for consultants about the City's CEQA process, these guidelines have not been finalized or published for public use.

RECOMMENDATIONS:

To improve the management of work done by consultants, PBCE should:

→ Establish procedures for regular communication between the environmental review planners and consultants, and consider establishing a list of required consultants

→ Finalize its draft CEQA guidelines for consultants

Finding 3: Staffing and Workload Should Be Reviewed to Ensure the Program Is Sufficiently Resourced. The CEQA team currently comprises 11 staff, including one principal planner who oversees the team. The team has experienced turnover and has reported challenges with high workload. We found:

- Evaluating the resource needs of the CEQA team is difficult because staff undertake unbillable work and there is incomplete workload data.
- PBCE intends to review the cost recovery calculation to improve fee setting and budgeting.
- Planners on the CEQA team complete tasks that would be more appropriate for support staff, such as invoicing, preparing mailings, and similar work. While there is a support staff position that is assigned (in part) to the CEQA team, this position had not been filled at the time of the audit.

RECOMMENDATIONS:

To better assess and distribute workload, PBCE should:

→ Update guidelines for how to track time, including for unbillable time, and review the related fee calculations as appropriate

→ Re-assign duties as possible, which could include filling the team's support staff position

Finding 4: Options for City-Initiated Environmental Analysis Should Be Regularly Weighed as Part of Strategic Planning. In some cases, the City has conducted environmental analysis that affects the type of review, or the level of review needed, for new developments. For example, there is an Environmental Impact Report (EIR) that covers the downtown area. We found:

- There are several types of City-initiated environmental analysis that the City can pursue to further streamline the environmental review process.
- Undertaking this type of environmental analysis comes at a cost and requires resources and careful planning.
- Whether to initiate new environmental analysis, and what type to choose, is a decision made by the City Council. To be effective, it should happen as part of the City Council's decisions about overall strategic planning.

RECOMMENDATION:

To enable the City Council to make informed decisions about strategic planning, PBCE should:

→ Regularly present to the City Council options for analyses that could streamline environmental reviews as part of the City's comprehensive planning efforts

This report has 12 recommendations. We plan to present this report at the March 28, 2022 meeting of the Community and Economic Development Committee of the City Council. We would like to thank the Department of Planning, Building and Code Enforcement and the Office of the City Attorney for their time and insight during the audit process. The Administration has reviewed the information in this report, and their response is shown on the yellow pages.

Respectfully submitted,

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This report is also available online at www.sanjoseca.gov/audits

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Background

A team in the City of San José's (City) Department of Planning, Building and Code Enforcement reviews new developments in San José to evaluate whether there are any adverse impacts on the surrounding environment. These reviews are conducted in accordance with state law and/or federal law.

California Environmental Quality Act (CEQA)

For new developments in San José, CEQA is the primary piece of legislation that governs environmental review. The basic purposes of CEQA, which was first enacted in 1970, are to:[1]

1) ***Inform*** *governmental decision makers and the public about the potential, significant environmental effects of proposed activities.*

2) ***Identify*** *ways that environmental damage can be avoided or significantly reduced.*

3) ***Prevent*** *significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.*

4) ***Disclose*** *to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.*

CEQA requires agencies, such as the City, to evaluate a variety of environmental impacts.[2] In San José, areas of review include:

- Aesthetics
- Air quality
- Biological resources (including tree removal and impacts to a riparian corridor)
- Cultural resources (including landmarks and historic buildings)
- Greenhouse gas emissions
- Hazards and hazardous materials
- Noise
- Transportation impacts

[1] See the California Code of Regulations, Title 14 §15002.

[2] CEQA can apply to public projects as well as private projects.

- Tribal cultural resources
- Utility services.

If the environmental review determines that the project could cause substantial adverse changes to the environment, CEQA requires the agency to:

- Require changes to the proposed project;
- Impose conditions on the approval of the project;
- Find that changes in the project are not feasible;
- Find the unavoidable, significant impacts are acceptable when balanced with the economic, legal, social, technological, or other benefits of the project (including region-wide or statewide environmental benefits); or
- Disapprove the project.

While CEQA sets out how an agency should approach determining whether an effect is significant, the guidelines recognize that the significance of an effect can vary across projects. There are some impacts that an agency must consider significant, such as if a project threatens to eliminate an animal or plant species or restrict the range of an endangered species. It is important to note that a project can still be approved even if it has significant effects on the environment.

If a project is approved that has required changes or mitigations to lessen the impact on the environment, CEQA requires that agencies monitor and/or report on those. This continues until the mitigation measures or changes are completed. In San José, the CEQA team reports on mitigation measures on a bi-annual basis.

CEQA does not require projects to have zero environmental impact or require agencies to disapprove projects that have environmental impacts. However, the agency must publicly disclose the impacts and its reasoning for approval (or disapproval).

Other Elements of CEQA

CEQA has specific time standards to guide a project's environmental review timeline. For example, an agency has 30 days to determine whether a project application is complete, after which point the agency is expected to complete an Environmental Impact Report (EIR) in one year if one is required.[3]

CEQA requires that the agency notifies the public about results of the environmental review process and gives the public an opportunity to provide

[3] Additionally, per the California Code of Regulations Title 14, §15108: "*Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.*"

comments. The agency must respond to all comments submitted that raise significant environmental issues.

The agency must inform Native American tribes in writing of proposed projects that are affiliated with the geographic area of the tribe (per Assembly Bill 52), if the tribe has requested such a notification. If the tribe requests a consultation, the City must consult with the tribal representative prior to making a decision regarding the level of review required.

Potential for Legal Challenges

It is possible that environmental documents can be challenged in court. These challenges can come from interest groups and other parties. Not all the environmental document types have the same level of legal defensibility. Thus, the threat or potential threat of litigation also plays an important role in ensuring the documents are legally defensible under CEQA.

Staffing and Organization

Environmental reviews involve staff from several City teams as well as outside consultants.

- **Environmental review planners:** A dedicated team with the Planning Division of PBCE oversees environmental reviews. This team consists of 11 full-time equivalent positions (FTE),[4] including two supervisors (Planner IV positions) and one principal planner. The remaining FTE are Planner I/II/III positions. There is an additional part-time contractor who performs reviews during times of high workload.

  The team is partly funded through planning fees. There are four FTE funded through other departments' funding sources (such as the Housing Department and the Environmental Services Department). Other positions are also funded by the General Fund and dedicated funding from specific projects (e.g., the Google development).

- **Environmental consultants:** Environmental review planners oversee the CEQA reviews, but the bulk of the analysis is conducted by third-party consultants. These consultants are hired by applicants but work closely with the environmental review team throughout the process.

- **Entitlement planners:** A separate team within the Planning Division is responsible for the entitlement process.[5] The entitlement process involves reviewing projects against design guidelines and ensuring the project aligns with the General Plan, specific neighborhood plans, or other applicable codes and policies. This analysis occurs concurrently with the

[4] Over the course of the audit, three vacancies were filled on the team.

[5] As of December 2021, there were 25 positions on the City's Permit Center/Planning Services and Development Review teams overseen by two division managers. Two positions were vacant.

environmental review. If the environmental review for a given project is small, the entitlement planner may also take the lead for the environmental review portion of the work and consult with the environmental review planners as needed.

- **Other City teams and departments:** Other City departments and teams are involved in the environmental review process, such as the PBCE Historic Preservation team, and the Departments of Transportation; Environmental Services; Parks, Recreation & Neighborhood Services; and Public Works. They provide analysis regarding historic resources, soil contamination, and transportation impacts, among others. The reviews they provide help to identify issues that need to be addressed in the environmental documents or point out necessary mitigations. In addition, the Office of the City Attorney reviews support for proposed mitigation measures and provides legal guidance.

Outcomes of Environmental Analysis

Not all projects need extensive environmental analysis to comply with CEQA. There are several possible outcomes from an environmental review:

1. **Exemption**: The agency could determine that the project does not fall under the CEQA statute and no review needs to be performed. Examples include minor changes to existing structures, new construction of small structures, and developments that are considered urban in-fill. In some cases, technical reports may be required to prove a project is exempt.
2. **Negative Declaration**: The agency could determine that the project is subject to CEQA but there is no substantial evidence that the project may have a significant effect on the environment.
3. **Mitigated Negative Declaration**: In some cases, the agency could determine that with some mitigations, the project does not have a significant effect on the environment.
4. **Determination of Consistency:** If the project falls within the scope of a previously prepared environmental document, the agency may determine that the project is consistent with the previous environmental analysis.
5. **Addendum to or Supplement to an Environmental Impact Report:** In some cases, a project may have some changes from a previously prepared EIR, but not enough to trigger an entirely new EIR. An addendum to the existing EIR may be required for small changes, or a supplement to the EIR may be required that has the remaining analysis needed.
6. **Environmental Impact Report (EIR):** This report is prepared when the project may have significant effects on the environment, and as such, requires full environmental analysis.

The City sometimes prepares EIRs that cover a large geographic area, like downtown. A new project in that area may be covered by the existing EIR or may only need an addendum to it (a much shorter process).

CEQA Review Process and Timeline

The City's CEQA review process is lengthy and requires coordination between all the project's stakeholders, including the applicant, their environmental consultant, and City staff in PBCE and other departments, including the Office of the City Attorney.

Broadly, San José's overall CEQA process is as follows:

- Application is submitted and is reviewed by City staff (30 days estimate for application review).
- Staff first determine whether a project is exempt from CEQA. If it is not exempt, an initial study commences to determine the level of review that will be required (unless it is already determined that an EIR will be prepared).
- Once the level of review is determined, the applicant's environmental consultant determines a scope of work in consultation with the City and completes the report.
- The environmental consultant will provide administrative drafts to City staff, who provide comments before finalizing the report.[6]
- For certain reviews (such as EIRs and negative declaration/mitigated negative declarations), the public has a chance to provide comments. With input from the environmental consultant, the City provides written responses to comments at the end of the process.[7]
- When the final document is prepared, the report gets certified (or denied) by the appropriate decision-making body (generally the Planning Commission, Planning Director, or the City Council).

Appendix B shows flowcharts of the City's CEQA process in greater detail.

After the project has undergone both the CEQA and entitlement reviews, it is either approved or disapproved by an appropriate decision-making body (e.g., the

[6] As discussed in Finding 2, projects are sent back and forth between the CEQA team (and other City staff) and the environmental consultant. It may be weeks or even months before a project is shifted from the consultant back to the CEQA team, and vice versa.

[7] Commenters include public agencies, nonprofits, community members, residents, and other interested parties. The environmental consultant prepares the responses to comments. Based on the comments, there may be text changes made to the documents. City staff (environmental review supervisory staff, the City Attorney's Office, other City department staff as relevant to the comment, etc.) reviews the responses and changes. The number of public comments can vary greatly. The public circulation period for an EIR and negative declaration/mitigated negative declaration typically is 45 days and 20 days respectively, though they may be extended for a longer period.

Planning Commission or the City Council). After approval, the project can move forward to the building permit phase. Building permits ensure compliance with building, electrical, mechanical, plumbing, zoning, engineering, energy, and accessibility codes and laws.

The environmental review process can be long, with an expected timeline of at least seven months from project intake for a negative declaration. Over the time period reviewed, the median amount of time to complete a negative or mitigated negative declaration was nearly 13 months, while an EIR was 1.8 years.[8] It should be noted that project complexity varies, and in some cases a project may have taken a long time due to factors outside the City's control. A standard 30-day application intake period is included in the expected timelines; CEQA's expected 1-year timeline for an EIR begins after the application is deemed complete.

Exhibit 1: Length of Environmental Review Process for EIRs, Supplements to EIRs, and Negative Declarations/Mitigated Negative Declarations (ND/MND)*

Environmental Document	Expected Timeline**	Median Months	Median Years	Range (days)	# of Projects
EIR	13 months	21.6	1.8	361-1,722	13
Supplement to an EIR		17.6	1.5	365-1,167	8
ND/MND	7 months	12.7	1.1	96-1,944	60

Source: Auditor analysis of CEQA team's data sheet and staff CEQA timeline standard operating procedures.

Notes:
* Comprises projects from staff's data sheet of environmental review that began between April 17, 2015 and August 28, 2020. The environmental review start date is based on the first environmental review attempt date available in the City's integrated permitting system (AMANDA) for the project. Not all environmental review projects that staff worked on are captured due to incomplete data availability.

** The expected timeline is based on standard operating procedures and management expectations for the time to respond to public comments. The expected timeline includes 30 days for application/intake review. Internal guidelines do not include an expected timeline for a supplement to an EIR.

Other Relevant Legislation

Several laws have been passed to help streamline the CEQA review process. For example, Senate Bill 7 was signed by Governor Newsom in May 2021. SB 7 expanded the type of projects that can receive streamlining benefits related to CEQA (such as certain renewable energy projects or housing developments that meet specific criteria).

Senate Bill 35, passed in in 2017, streamlines the CEQA process for certain multifamily housing developments. The bill means that, for eligible projects, only design review and public oversight against objective criteria is allowed. Assembly Bills 2162 and 101 allow eligible affordable housing projects and low-barrier

[8] Separately, we selected a limited number of addendum and determination of consistency projects to review. These took less time than EIRs or ND/MNDs (between 1.5 and 7 months).

navigation centers to go through the ministerial approval process, exempting them from CEQA.

San José Municipal Code

Title 21 of the San José Municipal Code incorporates CEQA and the related CEQA guidelines. The Muni Code also provides specific detail about San José's appeals hearing processes and additional exemptions to those listed in the state code.

In addition to Title 21 pertaining to CEQA, ordinances in the Muni Code relating to historic preservation and tree removal may apply to a project's overall environmental clearance.

National Environmental Policy Act

If any projects have federal funding, then they may be required to have an environmental review in accordance with the National Environmental Policy Act (NEPA). As of June 2021, staff reported that there were 11 NEPA reviews underway in the City out of 131 major environmental reviews.

Like CEQA, NEPA was signed into law in 1970, and serves a similar purpose. It requires agencies to assess the environmental effects of proposed actions (such as permit applications and construction of publicly owned facilities). Several of the NEPA reviews in San José relate to affordable housing projects.

Auditor's Office Survey of Customers

As part of our audit, our office conducted a survey of environmental review customers. Any environmental consultant, applicant, or other related party who was listed as a recent environmental review project contact in AMANDA[9] was provided the survey via email. This includes City staff who had projects with the CEQA team. See Appendix A for a note on the methodology and Appendix D for the full results of the survey.

Highlights from the survey were:

- **Overall process:** About half of the non-City respondents thought that the overall process was clear, straightforward, and appropriate for the project under review.
- **Timeliness:** Timeliness was a recurring issue. Most respondents said the process took longer than they anticipated, and nearly all non-City respondents who had an EIR thought that the process took longer than they anticipated.
- **Timeline Communication:** Over sixty percent of non-City respondents rated the communication of timeline expectations as fair or

[9] AMANDA is the City's integrated permitting system.

poor. This was higher for those respondents that had an EIR as one of their projects.

- **Response to documents:** More than half of the respondents thought that comments had been provided on documents in a timely manner.
- **Comparison to other jurisdictions:** About half of respondents thought that comments were in line with those they'd received from other jurisdictions.

Respondents had generally positive ratings on:

- How well the City **communicated** expectations regarding the type of environmental clearance that would be required, technical reports, and the respondent's role and responsibilities.
- The **knowledge and expertise** of staff.
- The **understandability**, **reasonableness**, and **consistency** of the City's comments on documents.

Finding I Improved Internal Processes Can Help Manage Environmental Reviews

Summary

The CEQA process is lengthy, requiring coordination and communication among different stakeholders, including the City's entitlement planners and the CEQA planners. Because of the complexity of projects, this coordination can be challenging. In addition, the City does not specify timelines for all projects, or consistently track projects against milestones. The City can also better measure performance around the timeliness of environmental reviews, which would help align day-to-day project management with overall project goals. Additionally, standardizing some processes by using established tools and templates can streamline the review process. We recommend that PBCE form a project management, environmental review, and entitlement review training plan; expand the model in which planners handle both the entitlement and environmental review processes; develop project management procedures; set performance targets for environmental review; update and develop tools and templates to standardize some elements of the review process; and educate staff in other departments about the CEQA process to enable more timely reviews of City projects.

Better Coordination and Clear Expectations on Timelines Can Improve Overall Project Management

The CEQA process is lengthy and requires coordination and communication among many different stakeholders. If problems with communication occur, or clear timelines are not adhered to, there can be delays that extend the process.

Coordination of Environmental Review Projects Can Be Fragmented

The CEQA and entitlement processes occur concurrently and are led by two separate people: the entitlement planner is responsible for the overall project while the CEQA planner is responsible for the environmental review. Information between the entitlement planner and CEQA planner is shared on an as-needed basis through informal check-ins. In addition, the standard operating procedures indicate that the CEQA planner should coordinate with the entitlement planner when certain milestones are met.

Staff have reported that coordination between the CEQA team and entitlement planners can be fragmented. For example, areas in which coordination between the CEQA team and the entitlement planner have been reported to have broken down include:

- **Notification of project changes:** Project changes, such as changes to the parking design of the project, may not always be relayed effectively. Such changes that occur after the environmental review process has begun can cause delays, since it may change the type of environmental review required (e.g., additional analysis and updates to technical reports). Currently, the entitlement planner will notify the CEQA planner about project description changes informally through email (or in person pre-COVID). The change will also be captured in AMANDA, but there is no system notification of the changes to alert the CEQA planner.
- **Coordination of timelines:** According to staff, the CEQA process generally drives the overall project timeline. While the CEQA planner is in charge of the environmental review timeline, the entitlement planner is in charge of the overall project timeline. It is the entitlement planner's responsibility to keep the CEQA planner up to date on changes to the project's overall timeline, and the CEQA planner is expected to keep the entitlement planner appraised of the progression of the environmental review. Disjointed coordination of timelines mean that schedules can become out of sync, adding to delays and miscommunication to the applicant.
- **Communication among stakeholders:** The entitlement planner is primarily the contact for the project applicant, whereas the CEQA planner works closely with the environmental consultant. These separate responsibilities can result in communications about expectations or timelines being unclear across the parties. In our office-conducted survey, most respondents said the process took longer than they anticipated, and several respondents noted a lack of communication or poor internal communication among City staff as being an issue. According to PBCE, the City is starting to request that all stakeholders (entitlement planner, environmental planner, applicant, and consultant) attend kickoff meetings to discuss the project's schedule.

Although managing the CEQA process requires much coordination, there are no set policies about general project management (e.g., prioritization of work, development of timelines, how to manage the flow of information with all the different stakeholders). Other City departments and teams are involved in the environmental review process, and they provide analysis regarding historic resources, soil contamination, transportation impacts, and more. There typically are not regularly-held meetings among all the key stakeholders.[10]

In addition, training is generally informal. Staff do not receive formal project management training, and environmental review training for entitlement planners is mostly on the job. If a group of employees is hired together, PBCE has a "CEQA

[10] Staff noted that prior to the disruptions due to COVID-19 and the large Google development, there were standing meetings between the Public Works traffic team and the CEQA team.

101" training that is offered, though it is unclear if this is provided to every new employee. There have been past environmental review training initiatives and efforts to cross train CEQA and entitlement planners, but due to workload and remote work, these have not been held consistently.

Other Cities Combine the Roles of the Entitlement and CEQA Planners

In other cities, including Oakland, Long Beach, Los Angeles, Milpitas, and Santa Clara, entitlement planners also handle the environmental review process. In Los Angeles, there is a Major Projects division that handles EIRs, but planners within the division also handle entitlement.

For small-scale environmental reviews in San José (such as exemptions without technical reports and determinations of consistency), entitlement planners typically take the lead on the environmental review portion and coordinate with the CEQA team as needed. This model makes it such that there is one person responsible and/or accountable for managing the project. However, this is only for the smallest of environmental review projects. Staff noted that entitlement planners would have to be trained on how to perform larger-scale CEQA reviews, and CEQA planners would require training on the entitlement process.

There are a few CEQA planners who, due to their previous work with the City's entitlement team, handle both the entitlement and CEQA reviews for given projects. Staff reported that this has worked well.

It should be noted that a 2016 Management Partners analysis recommended that the City integrate the CEQA planner and entitlement planner roles.[11]

Developing Timelines and Tracking Project Milestones Can Help Manage Projects

The CEQA team does not develop timelines for all environmental reviews. For larger projects, such as EIRs or development projects identified as being of high interest to the City, planners may develop timelines. However, this does not occur for all projects, such as for those that may have lower-level environmental reviews. Without defined timelines for the completion of projects, projects may be prolonged in the absence of a clear expectation for a completion date.

Also, CEQA planners do not track progress toward milestones within a project's lifecycle, such as when a draft is due or reviewed, for all projects. Clear expectations on milestones for when certain portions of a project are complete communicate to staff what to manage towards and how to set expectations with

[11] *City of San José Development Services Cost Recovery Analysis, Process Improvements, Calculation of Unearned Revenues, and Refund Processing*, Management Partners, 2016, found at http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2292&meta_id=606812.

a consultant. Depending on the type of environmental determination, examples of milestones to track in the CEQA review process may include:

- **Scope of work:** When the environmental consultant's scope of work is received and approved by staff.
- **Notice of Preparation:** When the notice to the public about the preparation of an EIR is received, reviewed by staff, and posted.
- **Administrative drafts:** When drafts prior to public circulation of the environmental document are received from the environmental consultant and reviewed by staff.
- **Notice of Availability:** When the notice to the public that a draft environmental document is available for public review is posted.
- **Responses to public comments:** When staff send public comments to the environmental consultant, the consultant provides updates to the draft and includes responses to the comments, and staff review and post these materials.
- **Public Hearing:** When the applicable hearing body approves the environmental document.
- **Notice of Determination:** When the notice that the project has been approved to be carried out is filed with the appropriate agency.

As noted previously, some projects do have timelines. To establish those, CEQA planners coordinate with the environmental consultant in developing the timeline based on the completion of identified milestones. Staff have guidelines for turnaround estimates for the City's review time (e.g., 30 days for the City to complete the first review of the administrative draft initial study). However, these turnaround times are built around when the consultant expects to be able to provide the work product. Staff reported that at a February 2022 meeting of an Environmental Consultants' Roundtable, the topic of creating and maintaining project schedules was discussed.

PBCE should develop procedures for project management that include having regularly-held meetings, developing timelines with all key milestones, and expectations on project roles and responsibilities for the CEQA planner, entitlement planner, and other City departments and teams. The project management procedures will help improve the high level of coordination that occurs to meet project goals.

Recommendations:

1: To improve the coordination of reviews, the Department of Planning, Building and Code Enforcement should:

a. Develop a training plan that includes both formal and informal training options on project management, environmental review, and entitlement review, and

b. Expand the model in which planners handle both the entitlement and environmental reviews, with a division dedicated to projects with more complex environmental review.

2: To improve the project management of environmental reviews, the Department of Planning, Building and Code Enforcement should develop a set of procedures that includes:

a. Having regularly-held meetings with key stakeholders,

b. Establishing timelines with all key milestones, and

c. Expectations on project roles and responsibilities for the environmental review planner, entitlement planner, and other City departments and teams (e.g., how project changes should be communicated, who is responsible for the overall timeline).

Measuring Performance Against Timeliness Standards Can Help Assess and Communicate Expectations

The timeliness of the environmental review process is not currently measured against goals or targets. Developing goals and measuring performance against those goals can provide several benefits to the CEQA team, including:

- Help prioritize and align day-to-day project activities within or across projects.
- Increase visibility and understanding of timeliness, including whether the City completes EIRs within CEQA's one-year target.[12]
- Allow the CEQA team to better set and communicate expectations based on data of what an expected timeline might be to all stakeholders. Half of survey respondents from our office-conducted survey reported that the communication of timeline expectations was fair/poor.[13]

[12] Other jurisdictions also reported timelines that went beyond this target.

[13] Staff are working to establish clearer lines of communication by establishing schedules with tentative dates at kickoff meetings with the consultant, applicant, and City staff and having consultants maintain and regularly update project schedules.

- Help identify factors that influence delays if they occur.

As mentioned, the CEQA team has procedures with estimated turnaround times for different environmental review determinations. Planning management also reported that for mitigated negative declarations, an environmental review timeline of 4-6 months would be acceptable and a timeline of 9-12 months for EIRs would be acceptable. Guidelines such as these can be used to help set target expectations for projects.

Previously, PBCE reported the percentage of environmental review documents that were ready after the second round of City review to the Development Services Ad-Hoc Committee.[14] The goal was 80 percent. According to staff, this is a difficult goal to reach and not something they are currently tracking.

Some other jurisdictions shared that they had environmental review timeliness performance measures. For instance, Los Angeles tracks the average amount of time to complete categorical exemptions, mitigated negative declarations, and EIRs, as well as the average amount of time between EIR milestones.[15]

The CEQA Team Has Available Tools to Help Track Timelines and Milestones

The CEQA team has a template for project schedule tracking that has fields for tasks, the estimated completion deadline, actual dates, and the task owner. However, it does not appear to be required or used as a standard practice.

AMANDA, the City's integrated permitting system, also has the capability to track milestones. This could facilitate measuring timeliness of the process, but it is not used consistently in this manner. Staff also enter data differently across projects, which makes it difficult to use current AMANDA data to understand milestones across projects. In some cases, key information about when a milestone was met is unavailable or is only included in comment fields. As noted in Finding 3, in some cases staff may not be recording time spent on short tasks for a project in AMANDA.

There is an AMANDA guidebook that explains how staff should be entering data in environmental review folders. However, these guidelines do not cover all information that would be helpful to promote complete, consistent data entry. This may be because, according to staff, AMANDA is primarily used for collecting fees. Also, AMANDA training is mostly on the job and staff do not report using the guidebook as a reference.

[14] This committee was formed in 2016 to address key process improvements, Development Services staffing, the status of major development projects in the entitlement and construction process, and customer feedback.

[15] Overall results for Los Angeles were about the same as we saw for San José (timeliness for Los Angeles' EIRs was 1.8 years and 1.2 years for mitigated negative declarations for 2020). However, Los Angeles pointed out that benefits of milestone tracking for them included better identification and communication of the reasons behind delays.

Finally, there is not a comprehensive list of completed projects that is maintained, and the completed EIR projects list on the PBCE website is incomplete. A complete list, ideally that includes whether milestones were met or the overall time spent on the project, is important to evaluate the overall performance of the division.

Recommendations:

3: To improve performance measurement and guide project management, the Department of Planning, Building and Code Enforcement should set performance targets for environmental review, including timeliness overall and timeliness of achieving milestones, and measure performance against the targets.

4: To promote consistency of environmental review data entry, the Department of Planning, Building and Code Enforcement should:

a. Update and expand AMANDA guidelines and related expectations around data entry for areas such as recording of staff hours, use of entry codes, and use of comments, and

b. Develop training for staff about the AMANDA guidelines.

5: To effectively track project milestones, the Department of Planning, Building and Code Enforcement should establish a mechanism for consistently capturing necessary milestone data either using AMANDA or another tool, and update appropriate guidelines as necessary.

Standardizing Processes Can Lead to Efficiencies

The CEQA team has developed various standard tools and templates to facilitate the environmental review process. These include standard noticing emails, environmental review checklists, email distribution lists, fee calculation information, the aforementioned schedule tracker, and others. According to staff, however, these tools are not used consistently. In addition, many of the tools are outdated and not all standard or routine processes are covered by these resources. For instance, there is not a document with all the City's thresholds of what is considered a significant environmental impact consolidated in one place. These thresholds have to be searched for within the applicable policies.

Other jurisdictions have benefitted from more standard project management resources and practices, and standardization of commonly occurring work elements.

- Long Beach credited good project management, such as instituting biweekly check-ins with consultants and staff follow-up, in part for being able to typically complete EIRs for their projects in one year or less.
- San Francisco has templates for kickoff meetings, progress meetings, and more, and guidelines for how they should be used.
- Los Angeles created regulatory framework templates to streamline their reviews. These templates have standard language for the regulatory background for the different impact areas (e.g., geology and soils). Thus, staff do not need to review the regulatory framework information in EIRs that consultants provide, since it has already been standardized.

Staff have reported efforts to develop and expand available tools and templates for the environmental review process, but due to workload, limited resources, and other priorities, it has been difficult to prioritize this work. For example, staff noted that having City resolution templates for adoption for the different type of environmental documents would be helpful.[16] Expanded and updated tools and templates for routine work will promote work efficiencies.

Recommendation:

6: To make the environmental review process more standardized and consistent, the Department of Planning, Building and Code Enforcement should update and expand relevant tools and templates for the environmental review team, as well as develop related procedures on the expected usage, including:

a. Establish a standard project schedule tracker that staff are expected to use for projects, and

b. Create additional tools and templates to support project management, such as agenda templates for meetings with different stakeholders, a consolidated list of the City's thresholds of significance, and City resolution templates for adoption for the different types of environmental reviews.

[16] Depending on the type of environmental document, a resolution of its approval by a hearing body such as City Council is also posted.

Reinstituting CEQA Training for Other City Departments Would Benefit the Overall Process

Providing training to other City Departments regarding the CEQA process could help improve the CEQA team's internal processes. Other City departments often reach out to the CEQA team for environmental review on City projects. Staff reported that outreach from City departments can be untimely, or staff may incorrectly assume what CEQA clearance a project requires. The project may end up needing a different (and lengthier) CEQA environmental determination than initially anticipated, which delays timelines.

The intranet has several resources for City departments about the CEQA process and timing expectations for when to submit a memo to the CEQA team for review for the proper CEQA language. In the past, the CEQA team has provided trainings to City departments on these types of topics. This was done for departments individually, as departments responsible for construction projects require more in-depth training. Such trainings have not occurred in recent years.

CEQA staff should further educate City departments of the CEQA process and expectations. Providing such information would help City departments reach out to the CEQA team in a more timely and informed way.

Recommendation:

7: To educate City staff about available resources and expectations for the environmental review process, the Department of Planning, Building and Code Enforcement's environmental review team should conduct annual trainings for City staff in other departments or teams.

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Finding 2 Better Management of Consultants Can Help Keep Projects on Track

Summary

Applicant-hired environmental consultants prepare the bulk of the analysis that drives environmental reviews. The City established an approved list of consultants in 2019, but this list is optional and the City does not have much control over which consultants the applicant hires, nor do planners have regular communication with consultants throughout the project. According to staff, the familiarity with the City and the quality of work varies among consultants. Since the establishment of the optional list, the median length of time that approved consultants took to complete negative declarations/mitigated negative declarations was three months shorter than non-approved consultants (though the number of projects is limited and projects vary in complexity). PBCE should establish procedures for more regular communication between the CEQA planners and consultants, consider requiring applicants choose consultants from its approved list, and finalize its draft guidelines for consultants about the City's CEQA process.

Improved Management and Coordination of Consultants Would Help Keep Projects on Track

When a private development project requires CEQA review, applicants must hire an environmental consultant to perform the necessary analysis and prepare the environmental documents. To ensure the documents are adequate, the CEQA team and other relevant City departments and teams review the documents, provide feedback, and request changes that the consultant is expected to incorporate. CEQA planners are responsible for interactions with the environmental review consultants. Although the applicant hires the consultant, the City is ultimately responsible for the environmental documents.

The City Does Not Have Much Control Over Which Consultants Are Hired

In a 2016 report, Management Partners recommended that the City, to help manage performance, institute a list of approved consultants from which applicants may choose. Management Partners intended for this to serve as a temporary measure until the City could establish a system to directly contract with the consultant (which was another one of Management Partners' recommendations).

Through a request for qualifications process, the City instituted a list of approved environmental consultants for private projects in 2019 from which applicants can select an environmental consultant. Use of this list is optional, and the City does

not have much control over who is hired or the terms of that contract.[17] Staff report that establishing a required consultant list was discussed with the Development Services Ad-Hoc Committee, but such a list was not ultimately established.

According to City staff, the familiarity with the City and the quality of work of environmental consultants varies, which can extend the project length. Since 2019, which was when the optional approved consultant list was launched, the median time for negative declarations/mitigated negative declarations prepared by approved consultants was shorter than other consultants. Negative declaration/mitigated negative declaration projects with an approved consultant had a median length of 329 days for completion, compared to 421 days with an unapproved consultant (though the number of projects is limited and projects vary in complexity).[18] This constitutes about a three-month difference.

In other cities, applicants may be required to contract with an approved consultant (Los Angeles, San Francisco), or the city contracts with the consultant directly themselves (Long Beach, Milpitas). This gives the city more control over what consultant is selected. Other cities can also remove consultants that are performing poorly from the approved list.

It should be noted that directly contracting with the consultant comes with additional responsibilities. If the City were to opt for such a solution, there would need to be sufficient staff trained to manage the contracts effectively. Staff reported that, given current staffing, they did not believe this would be a feasible option for the City.

Better Follow-up with Consultants May Help Projects Progress Through Milestones

Projects are often being worked on by the consultant for extended periods of time. According to staff, CEQA planners do not regularly communicate with environmental consultants to track how work is progressing. The CEQA team reports a lack of capacity for monitoring projects as consultants are working on them. There also is not a clear process for what staff should do when consultants do not provide documents when expected.

Exhibit 2 shows the progression of two projects through the CEQA process.[19] **It should be noted that these projects were selected because they had**

[17] The City can use the performance of a consultant as grounds for removal from the recommended list of consultants. In addition, the City can ask for a peer review if the consultant produces a low-quality document.

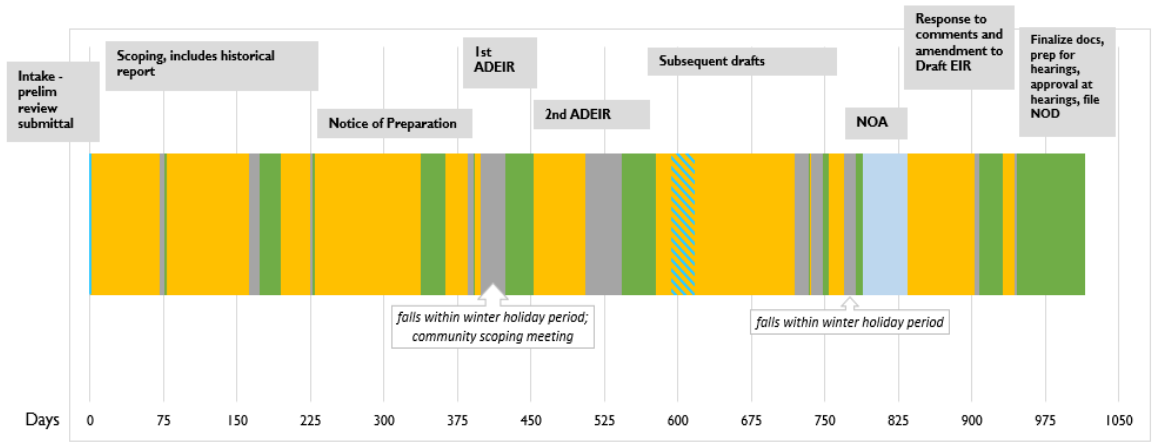
[18] There were too few EIRs prepared by non-approved consultants to do a similar analysis. The analysis for negative declarations/mitigated negative declarations consisted of a total of 23 projects. Not all environmental review projects that staff worked on are captured due to incomplete data availability.

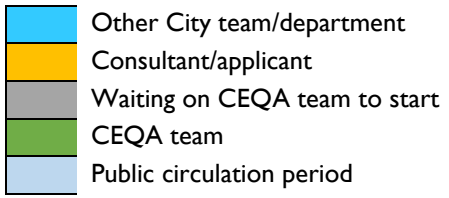
[19] The two projects were selected based on the quality of the data available (e.g., AMANDA entry comments) to capture environmental review document hand-offs that occurred between the CEQA team and consultant.

more notes in AMANDA about the process than other projects, which supported completing the analysis. Staff further noted that these projects took longer than usual due to varying circumstances that slowed down the process.

Exhibit 2: Illustrations Showing How the Environmental Consultant's Work Drives Project Timelines

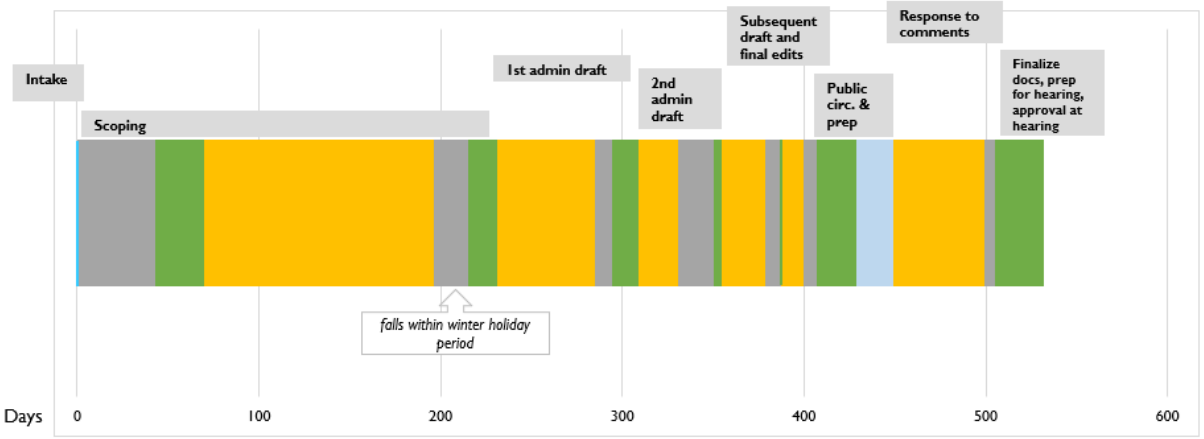
EIR Project





ADEIR: Administrative Draft Environmental Impact Report
NOA: Notice of Availability
NOD: Notice of Determination

Mitigated Negative Declaration (MND) Project



Source: Auditor analysis of AMANDA data, staff interviews, and project documents relating mainly to the environmental review files. Data is mainly from environmental review files showing interactions between the CEQA team and the consultant. Other City staff reviews that may have impacted the project timeline may not be captured.

Note: The EIR project timeline shown includes a preliminary review (an optional process that takes place prior to a formal project application being submitted). In addition, changes to state law affected the permit required for the project. For the MND project, during the scoping period that falls on the consultant/applicant side, staff report that the applicant was selecting an environmental consultant.

For the projects in Exhibit 2, there was minimal documented evidence in AMANDA that the planner regularly contacted the consultant about the progress during the long periods where the project was with the consultant. For stretches of time within some of those periods, there was no documented evidence in AMANDA that the planner had contacted the consultant at all.

Other jurisdictions have clearer expectations to regularly monitor and manage the consultants' work. For example, in Long Beach, planners have biweekly meetings with their consultants. San Francisco has guidelines on communication protocols with consultants. The guidelines include protocols for when deliverables are provided late and require that consultants provide solutions to maintain the overall project schedule.

PBCE Should Finalize Environmental Review Guidelines for Consultants

Staff report that draft guidelines about the City's CEQA process were created and shared with consultant firms prior to the first Environmental Consultants Roundtable, which was held in October 2019.[20] These guidelines include helpful information, such as what City policies apply to each CEQA review area (e.g., greenhouse gas emissions, noise).

The guidelines also indicate where the City has additional thresholds beyond what CEQA requires. As noted in Finding 1, there is not a document with all the City's thresholds of significance consolidated in one place. Consultants have to research applicable thresholds from the General Plan, Council Policies, and other relevant documents. Staff noted that a document that consolidates this information would be useful.

The consultants provided feedback, but the guidelines were never updated and finalized for public use. Staff reported that the guidelines have never been made public because of a lack of staff resources to revise and finalize them. Currently, staff provide consultants with reports of similar projects as a guide.

Oakland, San Francisco, and Los Angeles reported providing some sort of template or guidelines for consultants. These include information that touches on:

- Submittal criteria,
- Examples of non-performance or why a project may be placed on hold,
- Information about the overall environmental review process and project management, and
- Specific guidance for preparing initial studies, negative declarations, and EIRs.

[20] The Environmental Consultants Roundtable was established to allow staff to provide updates to environmental consultants and to hear feedback. Staff intend for the Roundtable to meet regularly.

PBCE should finalize and publish its environmental review guidelines for consultants. This would be a streamlined way to inform consultants about the City's CEQA process, and better prepare them as they undertake their analysis. Staff also stated that they would like to have standard templates for the consultant, such as for addendums and initial studies.

Better Communication and Management of Consultants' Work Can Lead to More Timely Environmental Reviews

Since the City does not have much control over what consultant is hired, and the City does not provide established guidelines to or regularly check-in with consultants, it is difficult for the City to manage the performance and timeliness of consultant work. Given that the environmental documents are with the consultant for a large portion of the overall project timeline, being able to better regulate this part of work through control over which consultants are hired, project management requirements, and published guidelines will help improve project timeliness.

Recommendations:

8: To better manage the work done by environmental consultants, the Department of Planning, Building and Code Enforcement should:

- **a. Establish project management requirements for the relationship with consultants, including regular check-ins, expectations for communication with the consultant, and guidelines for dealing with delays, and**
- **b. Consider instituting a list of required consultants.**

9: The Department of Planning, Building and Code Enforcement should finalize and publish guidelines about the City's CEQA requirements and process for environmental consultants to help them prepare environmental documents according to the City's standards.

Finding 3 Staffing and Workload Should Be Reviewed to Ensure the Program Is Sufficiently Resourced

Summary

The CEQA team currently comprises 11 FTE, including one principal planner who oversees the team. The team has experienced turnover and reported challenges with high workload. However, evaluating whether the team could add resources is difficult since unbillable hours and incomplete data hinder cost recovery evaluation. It is clear, though, that planners on the CEQA team complete tasks that would be more appropriate for support staff, such as invoicing and preparing mailings, which increases the workload for the planners. PBCE should review the cost recovery calculation for environmental review fees, review which hours should be billed, and reassign administrative tasks from the CEQA planners, which could include filling the support staff position assigned (in part) to the environmental review team.

The CEQA Team Has Had Turnover and Reports High Workload

The CEQA team currently has 11 active staff, including one principal planner who oversees the team. In addition, there is one peak staffer[21] who works part-time for the team. Staff from within PBCE and other City departments have reported that turnover within the CEQA team has impacted work.

Staff also reported that workload challenges have made it difficult to complete process improvements (e.g., finalizing and publishing the City's CEQA guidelines, developing additional tools and templates to expedite work, cross training CEQA and entitlement planners), regularly follow-up with consultants during the project, and juggle competing project priorities.

During our audit, the CEQA team filled three vacant positions with new staff. Management reports that there have been persistent vacancies on the team in recent years. As of December 2021, the median tenure of non-supervisory staff was about 2.5 years. In our office's survey of applicants and consultants, respondents cited improvements to staffing and consistency of assigned staff as areas that would have made their process easier.

Of the eleven planner positions on the team, four of them are limit dated, meaning that the funding expires rather than continuing on to next year's budget. All four

[21] Prior to the audit, the peak staffer had not been submitting a Statement of Economic Interest (Form 700). PBCE reports that it has since required the individual to begin filing Form 700s.

positions are currently slated to expire in June 2022, but staff anticipate that they will be extended (as they have been in the past).

Some Staff Costs Are Recovered by Fees, But Unbillable Hours and Data Reliability Hinder Cost Recovery Evaluation

The environmental review fees are expected to fully cover the cost of services. The revenues from these fees fund positions on the CEQA team as well as other costs, such as indirect costs for support services. See Appendix C for the 2021-22 environmental review fees.

Ideally, fees should be set such that the team can adequately staff the program to cover the workload, hit project milestones (see Finding 1), and recover costs (as appropriate). However, not all staff activities are billable to projects and there are some problems with data entry. This complicates efforts to calculate whether the team is meeting cost recovery goals, which affects the analysis of whether more resources can (or should) be added.

Planner's Workload Includes Time That Cannot Be Charged to Projects

Projects are billed with base fees and then at an hourly rate once the base fee amount is expended. Staff report that there are a variety of tasks that staff do not, or cannot, bill to a project. These unbillable hours are generally charged to the Planning Development Fee Program Fund.[22] Charging hours that aren't billed to customers to the Fee Program Fund will impact the fund's overall cost recovery, as more hours are being charged than are billed.

According to staff, unbillable activities include:

- Training,
- Staff meetings,
- Responding to questions from stakeholders or the public about potential or past projects that aren't currently being billed, and
- Quick memo reviews or coordination with other City departments.

Incomplete Data Hinders Cost Recovery

In addition, some of the data around staff hours is incomplete, further complicating efforts to calculate and achieve full cost recovery. For example, staff may not be entering all time spent on short phone calls or emails. This impacts the ability to assess what work should be recovered through fees. See Finding 1 for more information about data reliability and related recommendations.

[22] Staff reported that unbillable hours had been charged to the General Fund in the past.

Also, one of the AMANDA analytical reports that management uses to view hours for the CEQA team does not pull all data as it should: the report does not include hours recorded by some staff members who are no longer employed by the City. Staff is working on correcting this issue.

PBCE Should Evaluate Cost Recovery

PBCE and the City Manager's Budget Office recently established separate funds to allow for clearer accounting of planning activities. In addition, PBCE staff intend to make improvements to how staff are budgeted, how data is entered and records are kept, and how fees are calculated to refine the cost recovery calculation. This also involves reviewing the hourly rate model in more detail.

Once the full expenditures of the CEQA team are established and compared against the revenues of the environmental review fees and other funding sources, PBCE will be able to determine whether fees should be increased to cover the staff needed for current or anticipated workloads. In addition, the type of performance measurement described in Finding 1 will help the CEQA team understand whether current resources are sufficient to accomplish the program's goals.

Recommendations:

10: To ensure costs are appropriately recovered, the Department of Planning, Building and Code Enforcement should:

a. Review and update guidelines for how to track time spent on environmental reviews and what activities should be billed, and

b. Review the cost recovery calculation for environmental review fees.

Some Planner Responsibilities Are Better Suited to Support Staff

Current staffing can be used more efficiently to help reduce the CEQA planners' workload. CEQA planners do a significant amount of administrative work that would be better suited to support staff.

Management estimates that administrative work may be 25 percent of the planners' overall time. Some planners estimate it could be as high as 30 percent of their time. Administrative responsibilities include:

- Photocopying, filing, and uploading documents;
- Setting up meetings;
- Circulating documents to other departments;
- Preparing mailings for certified mail;

- Delivering documents to the County Clerk;
- Preparing invoices; and
- Following up with applicants to ensure invoices are paid.

These tasks are done in addition to time recording that planners must do to ensure their time is appropriately charged to projects. Although some administrative work is necessary, filling planners' time with work that less specialized staff can perform is not an efficient use of City resources.

In the City's job description for Planner 1/11/111, the listed job duties are specific to research, analysis, and reviews for planning documents and projects (such as land use entitlements, the General Plan, and environmental reviews). Other duties include providing information and presentations to the public and keeping records in AMANDA. Activities such as invoicing are not listed.

These types of administrative activities are listed in job descriptions of support staff. For example, the Office Specialist job description lists filing as a duty performed daily, and the Staff Specialist job description lists the preparation of invoices as a duty performed daily or several times a week.

In the 2021-22 budget cycle, PBCE assigned an open support staff position to share between the CEQA team and the Historic Preservation team. At the time of the audit, the position had not yet been filled.

Invoicing Should be Assigned to Separate Staff

In addition, giving planners the job of invoicing is contrary to good practice of separation of duties. Planners already are entering the number of hours that they work, which is the basis for the amount charged on invoices. They should not also be responsible for preparing, distributing, and collecting on those invoices (as they are today).

Though we did not find any problems during our review, per the Government Accountability Office, separating the tasks for a transaction is important to prevent the potential for mistakes or abuse.

> *Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event.*

Separating the invoicing duties from the planners is particularly important as planners can edit the number of hours charged to a project after entering them in AMANDA, which would alter the amount charged on an invoice.

Recommendation:

11: To reduce workload on environmental review planners, the Department of Planning, Building and Code Enforcement should re-assign invoicing and other administrative duties to support staff, to the extent possible. This could include filling the administrative position assigned to the environmental review team.

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Finding 4 Options for City-Initiated Environmental Analysis Should Be Regularly Weighed as Part of Strategic Planning

Summary

In some cases, the City has conducted its own broader environmental analysis that affects the type of review, or the level of review needed, for new developments. For example, there is an EIR that covers the downtown area. There are a variety of strategies that the City can pursue to further streamline the environmental review process. However, undertaking this type of environmental analysis comes at a cost and requires resources and careful planning. Whether to initiate new environmental analysis, and what type to choose, is a decision made by the City Council. To be effective, it should happen as part of the City Council's decisions about overall strategic planning. To ensure that the City Council is informed about options for potential environmental analysis that could improve the CEQA process, we recommend that PBCE develop a process to regularly present this information to the City Council.

There Are Multiple Ways to Streamline the CEQA Review Process

Absent any preexisting environmental analysis or law, a new development that is significant enough to trigger a CEQA review would have to complete a thorough environmental analysis for the specific project. This involves site- and project-specific analysis that is conducted by the environmental consultant, paid by the applicant.

This type of analysis requires time and money. As discussed in the Background of this report, a full EIR in San José can take almost two years to complete. Example EIRs that we reviewed were charged between $40,000 and $60,000 in environmental review fees alone (excluding the cost of hiring an environmental consultant and any other City fees).

The City Can Initiate Environmental Analyses to Streamline the Process

Under CEQA, the City has the option of initiating broader environmental analysis, such as of geographic areas or policies and plans, to expedite analysis for new developments. These analyses can expedite reviews for new developments and are linked to broader work the City is undertaking, such as development in downtown, updates to a policy, or changes to the Municipal Code.

Types of City-Initiated Environmental Analysis

There are several potential avenues that the City can explore to conduct its own environmental analysis:

- **Area-wide EIRs**: In recent years, the City has developed EIRs that cover a geographic area. One example is the Downtown Strategy 2040 EIR,[23] which covers downtown. The environmental analysis builds on and slightly modifies what is covered in the 2040 General Plan (which also is an EIR). The EIR "*provides project-level review (where possible) and program-level review for future actions under the Downtown Strategy 2040.*"[24] Project-level review is more thorough and specific; the Downtown Strategy provides this project-level review primarily for traffic-related impacts.

  The Downtown Strategy 2040 is not the City's only EIR that covers a geographic area. There are several EIRs for development policies or area plans, such as the North San José Development Policy.

- **Specific Plans:** There are also other types of plans, beyond a General Plan, that can be used to set forth development goals in a particular area with an associated environmental review. For example, a specific plan is developed for the systematic implementation of all or part of a general plan. Projects that are built in accordance with a specific plan could be exempt from further CEQA analysis.

  The City has used specific plans in the past to shape development in certain areas, such as Communications Hill. Council Policy 6-22 covers the process of developing specific plans.

- **City Policies and Ordinances:** Reviewing relevant policies and ordinances to ensure that they are supporting the City's CEQA process, not hindering it, is another option for streamlining environmental reviews. Ordinances that are relevant for environmental reviews cover areas such as historic preservation, tree removal, and as discussed below, transportation.

  The City Council has a Transportation Analysis Policy (5-1) that governs how transportation impacts will be evaluated in the CEQA process. Staff reported that the current policy is stricter than what the state allows, which may lead to projects requiring more extensive environmental analysis than they would in another jurisdiction. In addition, projects are

[23] The Downtown Strategy 2040 EIR can be accessed on PBCE's website.

[24] Under CA Code of Regulations, Title 14 §15168, *A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either (1) geographically, (2) as logical parts in the chain of contemplated actions, (3) in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."*

required to complete a local transportation analysis (beyond what is required by CEQA) that can take additional time.

Reviewing relevant policies and ordinances to ensure that they are supporting the City's CEQA process, not hindering it, is another option for streamlining environmental reviews.

- **City-wide Surveys for Specific Impacts:** In some cases, a specific environmental impact may raise issues for many types of development. Historic preservation is a prime example. Under CEQA, developments must evaluate the impacts their development has to historic structures. If a structure is determined to have historic significance, this usually triggers an EIR.

  Staff report that the City does not currently have a list of all the buildings in the city that have (or could have) a historic designation. Such a list would be helpful for applicants to understand whether their property will require further historic analysis.

- **Expanding Ministerial Projects:** Another option is to pass legislation that makes certain types of projects exempt from CEQA by making them subject to ministerial approval. CEQA only applies to discretionary projects, meaning projects that the governing body (e.g., the City Council) has the discretion to approve or deny. If the governing body is required by law to act on a project in a particular way, without any room for judgment, then the project is ministerial.

  Recently, the State of California has passed laws to make certain types of projects ministerial. This means that those projects are not subject to a CEQA review (among other implications). For example, Senate Bill 35 authorizes multifamily housing developments that meet a certain set of criteria to be subject to a streamlined, ministerial approval process. Assembly Bills 2162 and 101 authorize eligible affordable housing projects and low-barrier navigation centers to go through the ministerial approval process as well.

  For the City to determine certain types of projects to be ministerial would require a change to the Municipal Code with any required environmental analysis conducted for that ordinance.

Benefits of City-Initiated Environmental Analysis

When there is environmental analysis already conducted for an area or type of project, this can make the CEQA process easier when an applicant comes to the City with a development proposal.

- **Time:** One benefit is the amount of time required to complete the environmental analysis for individual projects, once the City-initiated analysis is completed. Having a portion of the analysis already completed makes the remaining environmental work required less complex. If historic

information about the property is already researched, or the transportation analysis is simplified, it reduces the amount of time that the applicant has to spend on that work.

In some cases, the City's environmental analysis may mean that a full EIR is not required. Depending on the type of project, this difference could be significant. Per staff procedures, an addendum would take an expected seven months. Over the time period reviewed, EIRs took about 1.8 years. Even if a project still needs to have an EIR, having environmental analysis completed by the City in place may simplify the project's review process.

- **Cost to an applicant:** Since the City is paying for a portion of the environmental analysis, the environmental review an applicant has to undertake for an individual project will be less expensive. If, for example, the City already determined that a structure on the property does not have a historic designation, that saves work that the applicant would otherwise have had to pay for. If an addendum or a determination of consistency is required instead of a full EIR, this could be the difference of tens of thousands of dollars for an applicant.
- **Better information for decision-making:** Information that the City can provide about the environmental impacts relating to a given property allow applicants to make better decisions earlier in the process. If an applicant already knows that their property has a designated historic landmark because the City undertook the analysis, or what the transportation requirements are for their area, that can inform their plans before they even apply.
- **Legal protection:** If a project can base its analysis off a pre-existing EIR, this also has benefits if the environmental analysis is challenged in court. According to staff, an environmental review based on an existing EIR (e.g., an addendum) provides better legal protection than a negative declaration. If the City prepares a negative declaration and is presented with a *fair argument* that there may be a significant environmental effect, then an EIR would have to be prepared. If an EIR is prepared, the Court must find there to be *substantial evidence* (a higher legal threshold) to question the EIR's findings.

Other Jurisdictions Use Similar Methods to Streamline Environmental Reviews

Most jurisdictions that we surveyed use methods to streamline the environmental review process for new developments.

- Oakland and Santa Clara use specific plans for identified areas in those cities so projects can get environmental clearance with minimal additional analysis. Oakland reports that in many cases, a new development under a specific plan area may only need an addendum.

- San Francisco and San Diego have created community plans for specific areas where, if projects are consistent with the area EIR and the zoning, the environmental clearance for a new development can be based off the initial EIR. San Diego has also moved forward with a new approach to their general plan that they expect will streamline environmental reviews.
- Long Beach has incorporated EIRs into their long-range plans for areas of the city where they want to see increased development.

The jurisdictions generally cited that these methods were helpful in their efforts to streamline and had the benefit of encouraging development in desired areas.

Though There Are Benefits, City-Initiated Environmental Analysis Come with Costs and Complexities

For City-initiated environmental analysis to be effective, the work requires resources as well as careful planning. Environmental reviews, as outlined previously in this report, are lengthy and expensive. Additionally, City-initiated environmental analyses are part of the larger strategic planning efforts of the City. Funding needs to cover the development of the broader plan or project as well as the environmental analysis.

According to staff, there is not currently staffing or funding for the kind of environmental analysis that would meaningfully streamline the CEQA process for individual projects. Staff report that in some cases, there has been funding set aside by Council and that for urban villages, some funding has come from grants. The City generally just conducts initial studies for urban villages, not full EIRs, so projects being built in urban village areas still must conduct environmental reviews.

Staff reported that costs were not generally recovered from applicants, even if the environmental analysis likely saved their developments from having to pay for more complex reviews for their project.

In the City Council's Policy 6-22 *Process and Criteria for Developing Specific Plans*, whether or not to develop a specific plan has to be based, in part, on the availability of funding and staffing resources.

Beyond Costs, City-Initiated Environmental Analysis Is Complex

Determining which environmental analyses to undertake and successfully designing and implementing the environmental work is not simple.

- **Time:** One difficulty is that developing broad environmental analyses requires a significant amount of time. It requires staff expertise, community planning, and potentially public noticing, in addition to the time spent actually conducting the environmental analysis.

- **Forecasting developments:** For some types of analyses, such as area-wide EIRs or specific plans, the City must be able to forecast what kind of development is likely to occur in the given area. If the EIR accounts for significant industrial development, but there turns out to be primarily residential development, the analysis done for the EIR may not be particularly helpful.
- **Planning mitigations:** To develop an EIR or a specific plan that is still relevant years later requires the City to predict what mitigations against environmental impacts will be needed for future conditions. In some cases, the mitigations that were planned for in the EIR may no longer be desirable or preferable when the developments actually occur.
- **Changing requirements:** CEQA requirements change. Policies that may have been effective and carefully planned previously can become obsolete. For example, CEQA previously required a transportation analysis based on Level of Service. Level of Service is a measure of automobile delay through a roadway. The State then changed the requirement under CEQA to require analysis based on Vehicle Miles Traveled, which measures the amount of automobile travel (including trips and distance) associated with a development. This required a change to the City's policy, and affected whether new projects could use an existing program EIR's Level of Service analysis.

Options for City-Initiated Environmental Analysis Need to Be Considered as Part of Strategic Planning Decisions

Environmental analysis is one component of the City's strategic planning efforts. Decisions to undertake City-initiated environmental analysis, and where to focus that analysis, are informed by larger, broader goals that the City has for development and growth. Such analysis is a tool that the City can use as part of the overall planning process.

Though PBCE spearheads the work on Citywide planning matters, decisions about the City's strategic planning are ultimately made by the City Council. This is demonstrated by the City Council's policy regarding specific plans, which clearly states: **"Only the City Council may authorize the initiation of the specific plan process."** The policy also outlines how a specific plan should be consistent with the other components of the City's strategic planning, such as the General Plan.

To make decisions about how limited resources should be best directed to support strategic Citywide planning, the City Council needs to be regularly informed about the options for environmental analysis that the City could undertake. This information could cover:

- How conducting City-initiated environmental analysis for the given plan aligns with overall City goals and activities, such as equity in the community, expanding affordable housing, and reducing greenhouse gas emissions;
- To what extent the environmental analysis responds to the interests of the development community;
- The availability of funding sources to cover the planning work, public outreach, staff costs, and environmental analysis; and
- The timeline required to complete the work.

Presenting the City's options for environmental analyses could be incorporated into a variety of discussions, including:

- **Annual or 4-year General Plan reviews**: These regular reviews are already opportunities for the City Council to weigh in on the City's planning and discuss the use of resources. For example, in December 2021 at a review of the General Plan, the City Council directed PBCE to bring forward in the budget process a proposed resource allocation to establish priority urban village plans to promote growth.
- **The initiation of Citywide planning efforts or land use policy decisions**: When beginning work on Citywide planning efforts, such as ordinances to expand options for building affordable housing, it would be beneficial for the City Council to determine the level of environmental analysis that would best support those efforts.
- **City Council Priority Setting:** Every year, the City Council sets priorities to guide staff work. In some cases, development priorities are included. When establishing these priorities and determining the City's approach, environmental analysis could be considered.
- **General Plan Housing Element Updates:** The General Plan Housing Element "*identifies the city's housing needs and opportunities and establishes clear goals and objectives to inform future housing decisions*." The City must update the Housing Element every eight years. This provides an opportunity to review the City's approach towards housing development, which could include environmental analysis.

Recommendation:

12: To enable the City Council to make informed decisions about strategic planning, the Department of Planning, Building and Code Enforcement should develop a process to regularly present to Council options for analyses that could streamline environmental reviews as part of the City's comprehensive planning efforts. This should include resources and tentative timelines needed to complete the work.

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Conclusion

Planning, Building and Code Enforcement's environmental review team reviews new developments in San José to evaluate whether there are any adverse impacts on the surrounding environment. This is done in compliance with applicable state, federal, and local laws. To improve the timeliness and coordination of reviews, the environmental review team should improve internal processes by expanding the model for planners to handle both the entitlement and environmental review processes, develop standard project management procedures, measure performance against established performance targets, and expand the use of standard tools and templates. Additionally, better communication and monitoring of consultants' work, and possibly requiring certain consultants be used for reviews, would help the process. Assessing which activities should be performed by environmental review planners will help address concerns about workload and staffing. To ensure costs are appropriately recovered, PBCE should review the cost recovery calculation of environmental review fees.

The City also can undertake a City-initiated environmental analysis that can help streamline the process for individual developments. Planning staff should regularly present to the City Council options for City-initiated environmental analysis, and the related resources and time required.

RECOMMENDATIONS

Finding 1: Improved Internal Processes Can Help Manage Environmental Reviews

Recommendation #1: To improve the coordination of reviews, the Department of Planning, Building and Code Enforcement should:

a. Develop a training plan that includes both formal and informal training options on project management, environmental review, and entitlement review, and

b. Expand the model in which planners handle both the entitlement and environmental reviews, with a division dedicated to projects with more complex environmental review.

Recommendation #2: To improve the project management of environmental reviews, the Department of Planning, Building and Code Enforcement should develop a set of procedures that includes:

a. Having regularly-held meetings with key stakeholders,

b. Establishing timelines with all key milestones, and

c. Expectations on project roles and responsibilities for the environmental review planner, entitlement planner, and other City departments and teams (e.g., how project changes should be communicated, who is responsible for the overall timeline).

Recommendation #3: To improve performance measurement and guide project management, the Department of Planning, Building and Code Enforcement should set performance targets for environmental review, including timeliness overall and timeliness of achieving milestones, and measure performance against the targets.

Recommendation #4: To promote consistency of environmental review data entry, the Department of Planning, Building and Code Enforcement should:

a. Update and expand AMANDA guidelines and related expectations around data entry for areas such as recording of staff hours, use of entry codes, and use of comments, and

b. Develop training for staff about the AMANDA guidelines.

Recommendation #5: To effectively track project milestones, the Department of Planning, Building and Code Enforcement should establish a mechanism for consistently capturing necessary milestone data either using AMANDA or another tool, and update appropriate guidelines as necessary.

Recommendation #6: To make the environmental review process more standardized and consistent, the Department of Planning, Building and Code Enforcement should update and expand relevant tools and templates for the environmental review team, as well as develop related procedures on the expected usage, including:

a. Establish a standard project schedule tracker that staff are expected to use for projects, and

b. Create additional tools and templates to support project management, such as agenda templates for meetings with different stakeholders, a consolidated list of the City's thresholds of significance, and City resolution templates for adoption for the different types of environmental reviews.

Recommendation #7: To educate City staff about available resources and expectations for the environmental review process, the Department of Planning, Building and Code Enforcement's environmental review team should conduct annual trainings for City staff in other departments or teams.

Finding 2: Better Management of Consultants Can Help Keep Projects on Track

Recommendation #8: To better manage the work done by environmental consultants, the Department of Planning, Building and Code Enforcement should:

a. Establish project management requirements for the relationship with consultants, including regular check-ins, expectations for communication with the consultant, and guidelines for dealing with delays, and

b. Consider instituting a list of required consultants.

Recommendation #9: The Department of Planning, Building and Code Enforcement should finalize and publish guidelines about the City's CEQA requirements and process for environmental consultants to help them prepare environmental documents according to the City's standards.

Finding 3: Staffing and Workload Should Be Reviewed to Ensure the Program Is Sufficiently Resourced

Recommendation #10: To ensure costs are appropriately recovered, the Department of Planning, Building and Code Enforcement should:

a. Review and update guidelines for how to track time spent on environmental reviews and what activities should be billed, and

b. Review the cost recovery calculation for environmental review fees.

Recommendation #11: To reduce workload on environmental review planners, the Department of Planning, Building and Code Enforcement should re-assign invoicing and other administrative duties to support staff, to the extent possible. This could include filling the administrative position assigned to the environmental review team.

Finding 4: Options for City-Initiated Environmental Analysis Should Be Regularly Weighed as Part of Strategic Planning

Recommendation #12: To enable the City Council to make informed decisions about strategic planning, the Department of Planning, Building and Code Enforcement should develop a process to regularly present to Council options for analyses that could streamline environmental reviews as part of the City's comprehensive planning efforts. This should include resources and tentative timelines needed to complete the work.

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APPENDIX A

Audit Objective, Scope, and Methodology

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, effectiveness, and equity of City operations and services.

In accordance with the City Auditor's Fiscal Year (FY) 2021-22 Audit Work Plan, we have completed an audit of environmental reviews for new developments. The audit was conducted in response to a request from a Councilmember and was approved by the Rules and Open Government Committee of the City Council to be added to the City Auditor's workplan.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this audit was to assess the time required to complete the City's CEQA review process. To understand management controls and meet our audit objectives, we did the following:

- Interviewed staff to understand the CEQA process, procedures, training, and available resources. This included staff from PBCE's CEQA team as well as staff from:
    - The Office of the City Attorney regarding their role and applicable laws
    - The Planning Citywide team about conducting environmental analysis as part of the City's planning efforts
    - The Office of Economic Development to understand the process for key development projects
    - Other teams and departments that are involved in the environmental review process, including staff from Parks, Recreation & Neighborhood Services; Public Works; Transportation; Environmental Services; and other teams in the Planning division.
- Reviewed standard operating procedures, available tools and templates, and draft guidelines to assess the resources available to staff when completing CEQA reviews.
- Reviewed applicable state, federal, and local laws, including the California Environmental Quality Act (CEQA) and Title 21 of the San José Municipal Code on Environmental Clearance.
- Analyzed data from the AMANDA permitting system to understand:
    - The organization of information about environmental reviews
    - Dates and process for selected projects
    - The number of environmental review folders and high-level information about those projects
    - How the process compared with overall standard operating procedures
    - The overall reliability of data relating to environmental reviews in AMANDA.

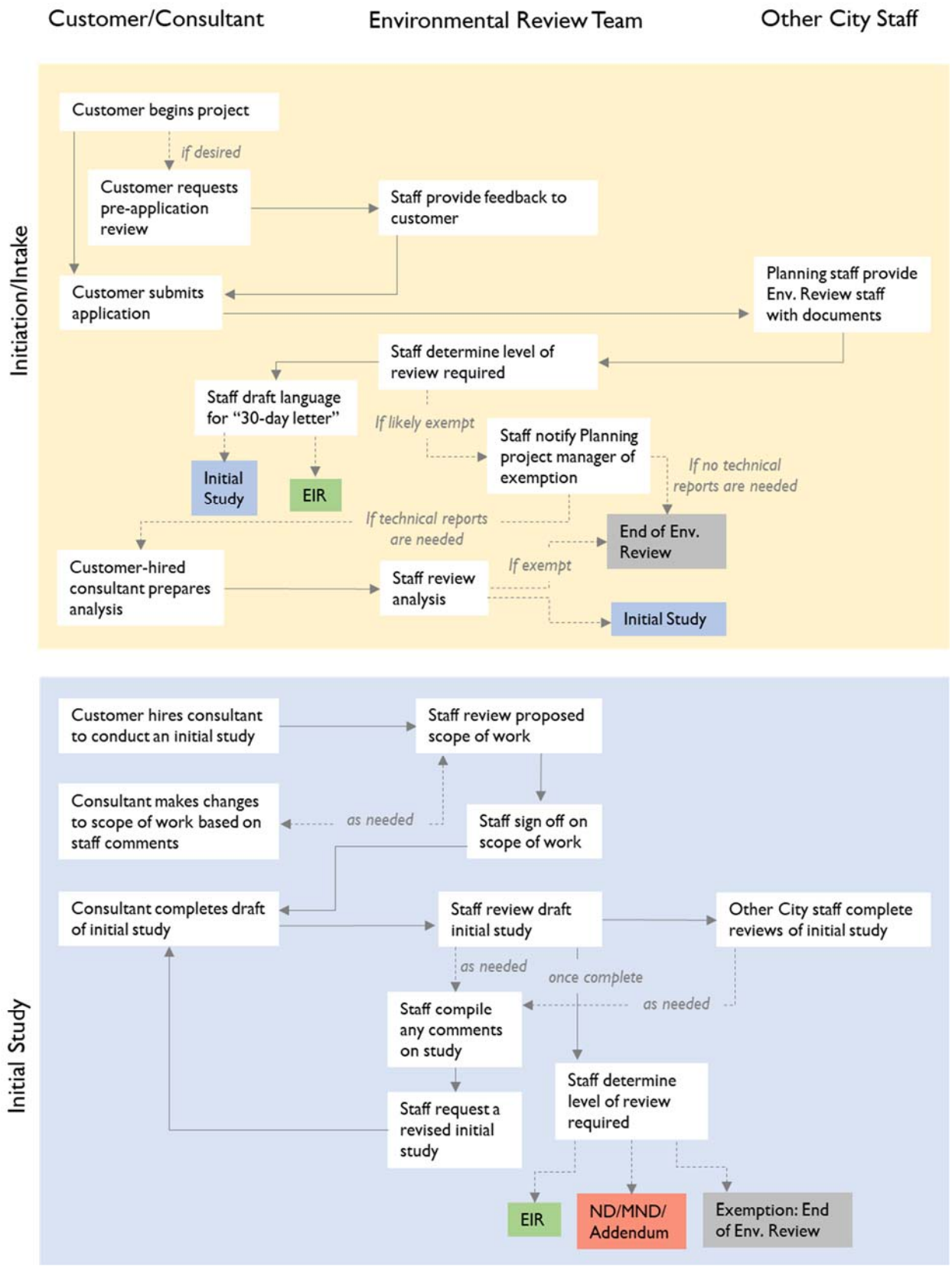
- Selected a judgmental sample of specific environmental review projects in order to:
    - Understand the interactions between stakeholders
    - Evaluate the overall length of time needed to complete the review
    - Review how environmental review consultants contributed to the process
    - Understand the potential reasons why projects were delayed
    - Review environmental documents (e.g., environmental impact reports) from selected projects to understand the work product of environmental reviews
    - Review comments from the public and the City's responses.
- Reviewed data from PeopleSoft and interviewed PBCE staff to understand staffing, work duties, and cost recovery of the environmental review team.
- Used geographic information to assess the differences in timeliness of EIRs in different parts of the city.
- Completed a survey of environmental review customers to gather feedback about the City's process. Customers who had contact information related to a recent environmental review project were invited to take the survey via email (projects initiated since early 2019). In total, 455 surveys were sent and 71 responses were submitted for a response rate of 16 percent.
- Benchmarked to other jurisdictions to understand how the City's process compared to peers. Jurisdictions included:
    - Oakland
    - San Francisco
    - Long Beach
    - Los Angeles
    - San Diego
    - Milpitas
    - Santa Clara (city).

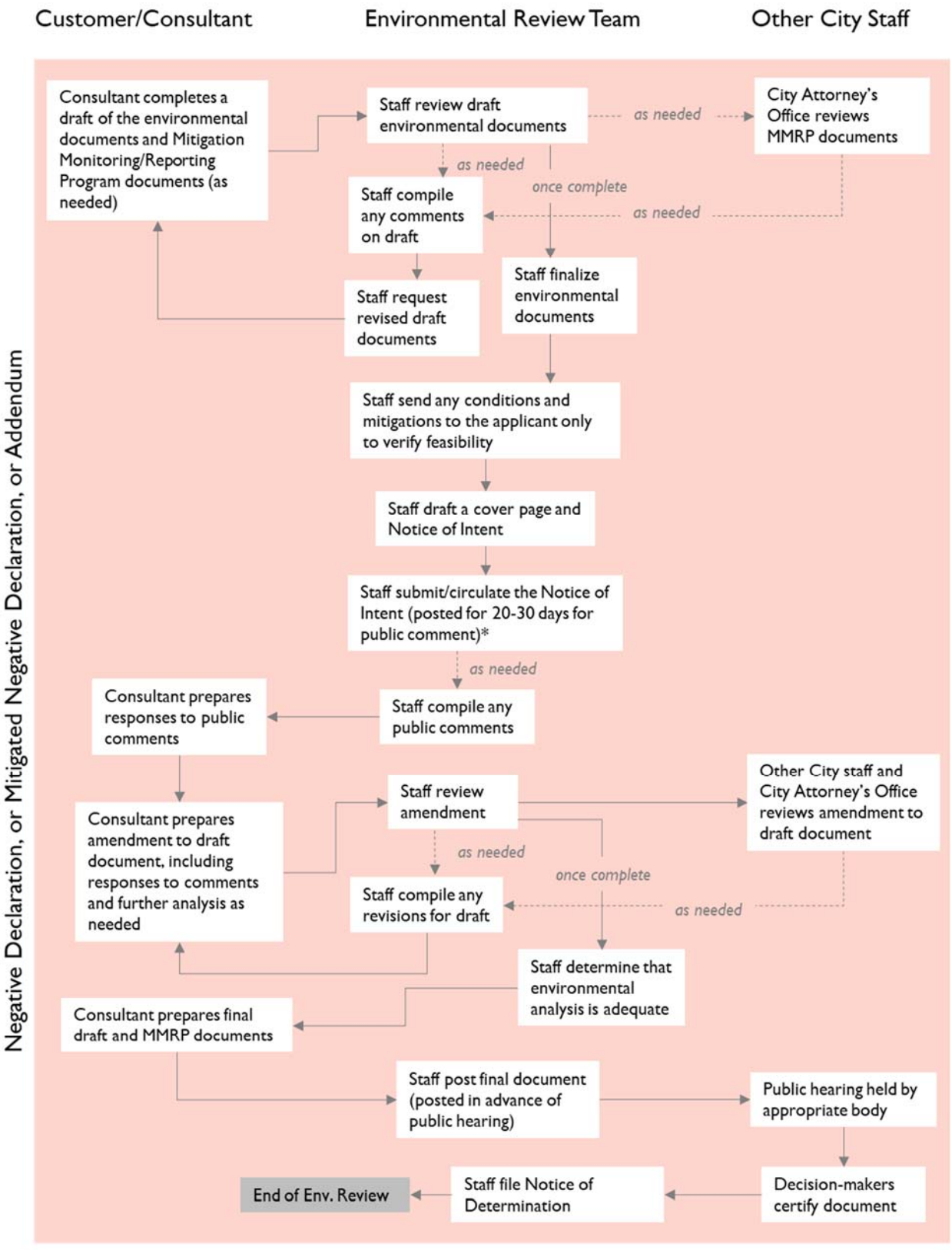
We would like to thank the Planning, Building and Code Enforcement Department and the Office of the City Attorney for their time and insight during the audit process.

APPENDIX B

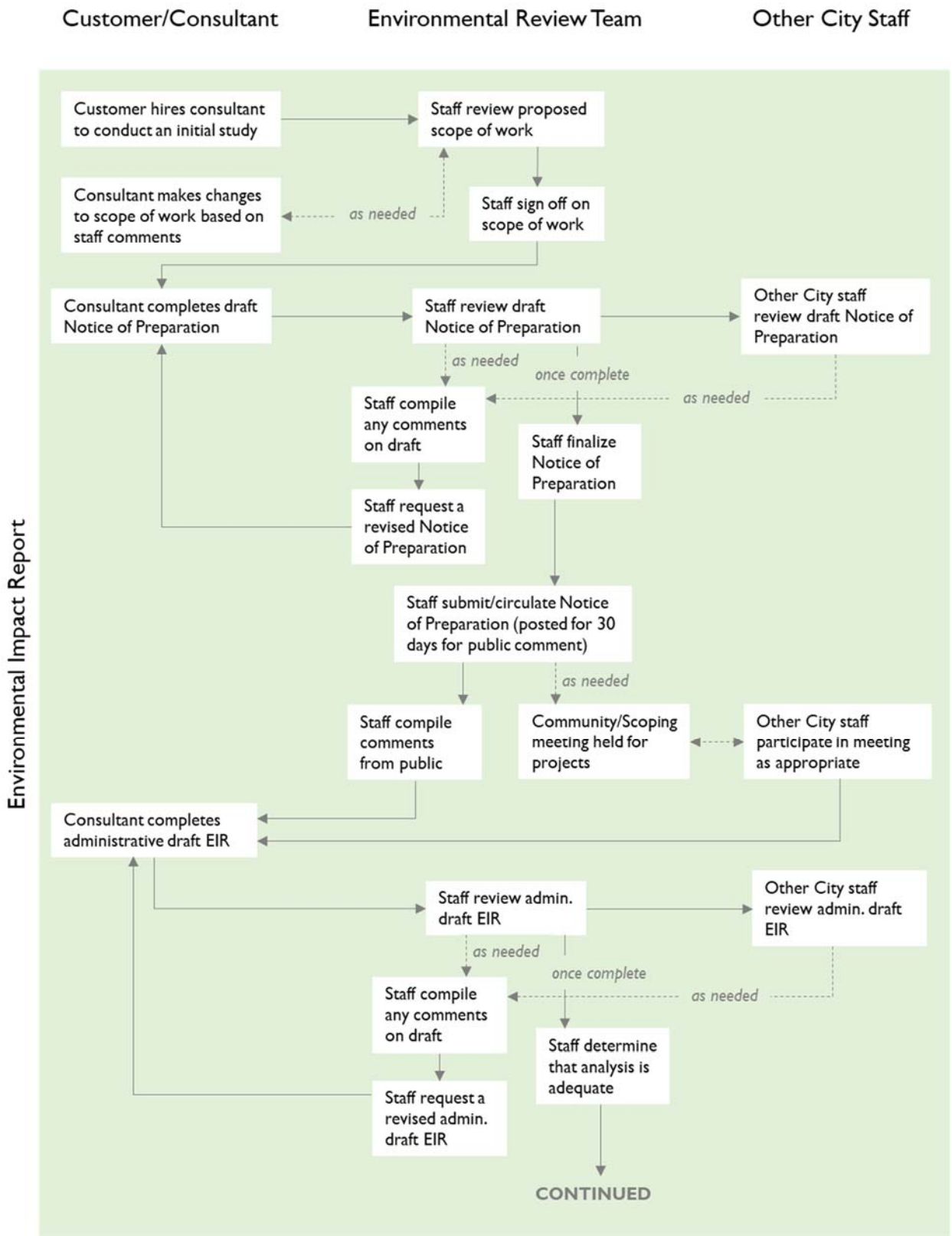
Flowcharts of the City's Environmental Review Process

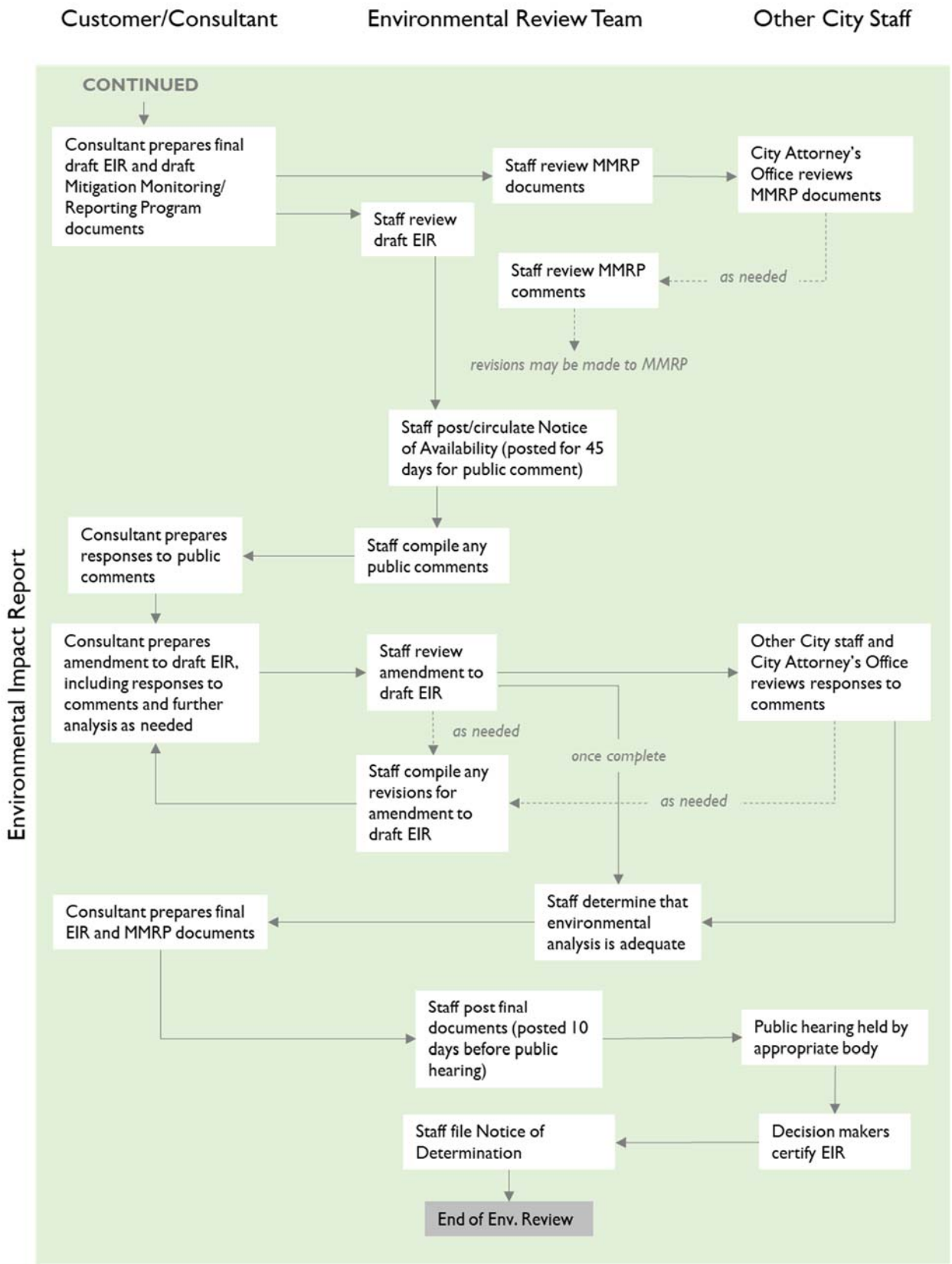
The following flowcharts show the CEQA process from initiation to approval. It should be noted that agencies can disapprove environmental documents, and environmental documents can be subject to lawsuits.


Customer/Consultant
Environmental Review Team
Other City Staff
Initiation/Intake
Customer begins project
if desired
Customer requests pre-application review
Staff provide feedback to customer
Customer submits application
Planning staff provide Env. Review staff with documents
Staff determine level of review required
Staff draft language for "30-day letter"
If likely exempt
Staff notify Planning project manager of exemption
If no technical reports are needed
Initial Study
EIR
If technical reports are needed
End of Env. Review
Customer-hired consultant prepares analysis
Staff review analysis
If exempt
Initial Study
Initial Study
Customer hires consultant to conduct an initial study
Staff review proposed scope of work
Consultant makes changes to scope of work based on staff comments
as needed
Staff sign off on scope of work
Consultant completes draft of initial study
Staff review draft initial study
Other City staff complete reviews of initial study
as needed
once complete
as needed
Staff compile any comments on study
Staff determine level of review required
Staff request a revised initial study
EIR
ND/MND/ Addendum
Exemption: End of Env. Review



* A public comment period is not required for an addendum but staff may choose to have one.


Customer/Consultant
Environmental Review Team
Other City Staff
Environmental Impact Report
Customer hires consultant to conduct an initial study
Staff review proposed scope of work
Consultant makes changes to scope of work based on staff comments
as needed
Staff sign off on scope of work
Consultant completes draft Notice of Preparation
Staff review draft Notice of Preparation
Other City staff review draft Notice of Preparation
as needed
once complete
as needed
Staff compile any comments on draft
Staff finalize Notice of Preparation
Staff request a revised Notice of Preparation
Staff submit/circulate Notice of Preparation (posted for 30 days for public comment)
as needed
Staff compile comments from public
Community/Scoping meeting held for projects
Other City staff participate in meeting as appropriate
Consultant completes administrative draft EIR
Staff review admin. draft EIR
Other City staff review admin. draft EIR
as needed
once complete
as needed
Staff compile any comments on draft
Staff determine that analysis is adequate
Staff request a revised admin. draft EIR
CONTINUED


Customer/Consultant
Environmental Review Team
Other City Staff
Environmental Impact Report
CONTINUED
Consultant prepares final draft EIR and draft Mitigation Monitoring/ Reporting Program documents
Staff review MMRP documents
City Attorney's Office reviews MMRP documents
Staff review draft EIR
Staff review MMRP comments
as needed
revisions may be made to MMRP
Staff post/circulate Notice of Availability (posted for 45 days for public comment)
Staff compile any public comments
Consultant prepares responses to public comments
Consultant prepares amendment to draft EIR, including responses to comments and further analysis as needed
Staff review amendment to draft EIR
Other City staff and City Attorney's Office reviews responses to comments
as needed
once complete
Staff compile any revisions for amendment to draft EIR
as needed
Staff determine that environmental analysis is adequate
Consultant prepares final EIR and MMRP documents
Staff post final documents (posted 10 days before public hearing)
Public hearing held by appropriate body
Staff file Notice of Determination
Decision makers certify EIR
End of Env. Review

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APPENDIX C

Fees and Charges for Environmental Clearance

Environmental Clearance	2021-22 Fee
EIR	
All Projects	$312 per hour for environmental services without designated fee
EIRs	$21,840 deposit plus additional time at $312 per hour plus publishing and noticing fees.
EIR Preliminary Review Fee	$936 plus additional time at $312 per hour plus all publishing and noticing fees
Reuse of a Certified EIR	$936 plus additional time at $312 per hour plus all publishing and noticing fees
Exemption	$936
Exemption - Electronic	$0
Negative Declaration	$6,552 deposit plus additional time at $312 per hour plus all publishing and noticing costs
Mitigation Monitoring	
EIR	$3,120
Negative Declaration	$3,120
Post Construction / On-going	$312 per hour
Prior to Issuance of Certificate of Occupancy (Compliance Review)	$1,248
Other	
Geotechnical Testing Environmental Review Fee	$936
Habitat Conservation Plan (HCP)	$936
Habitat Conservation Plan (HCP) Nitrogen Deposition Only	$624

Source: City of San José 2021-22 Fees and Charges

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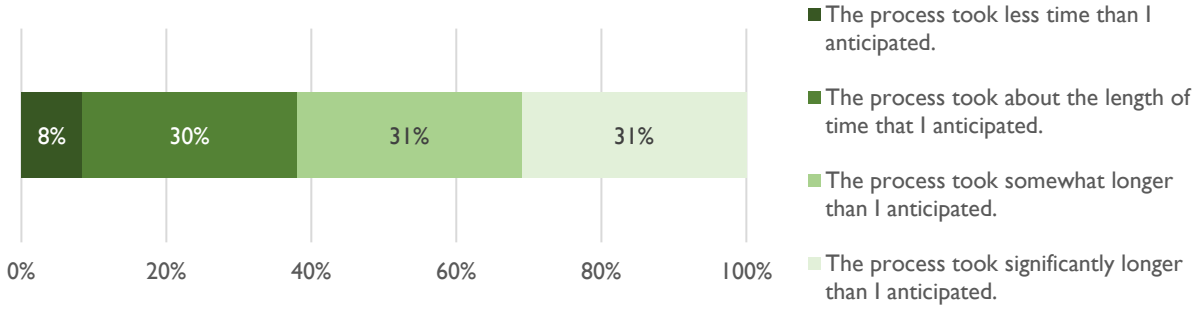
APPENDIX D

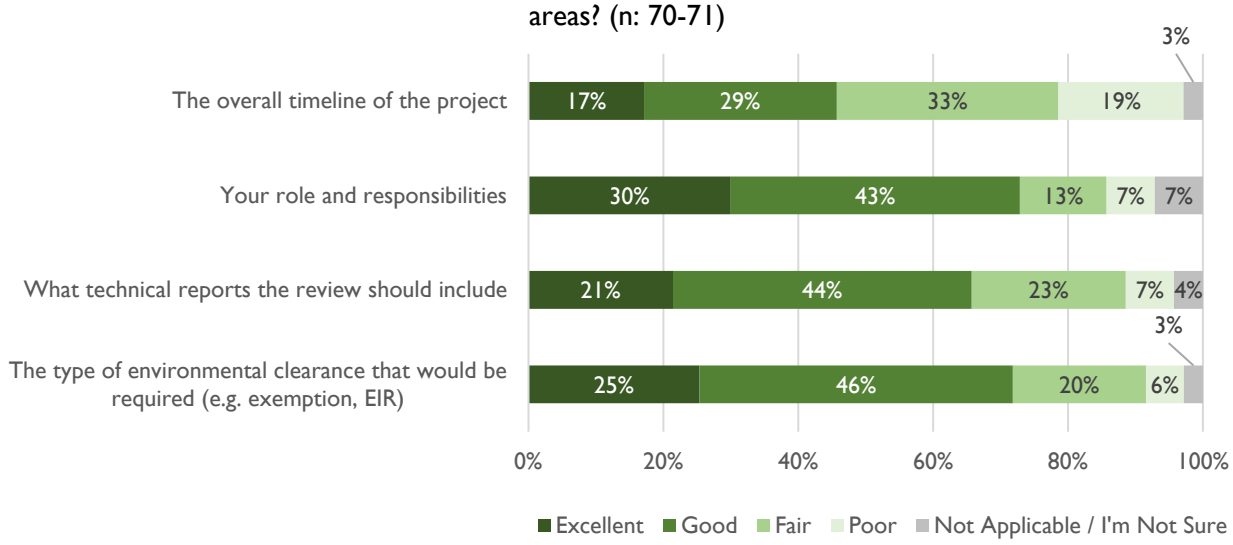
Results of Customer Survey Conducted by the Office of the City Auditor

The following are results from a survey of environmental review customers that was conducted during the audit by the Office of the City Auditor. Respondents included applicants (developers, residents, and businesses with projects), environmental review consultants, City staff, architects, and other specialized consultants that were involved in the environmental review process. In addition to the questions listed below, there were two open ended questions that asked for suggestions for improvement or any other comments from the respondents.

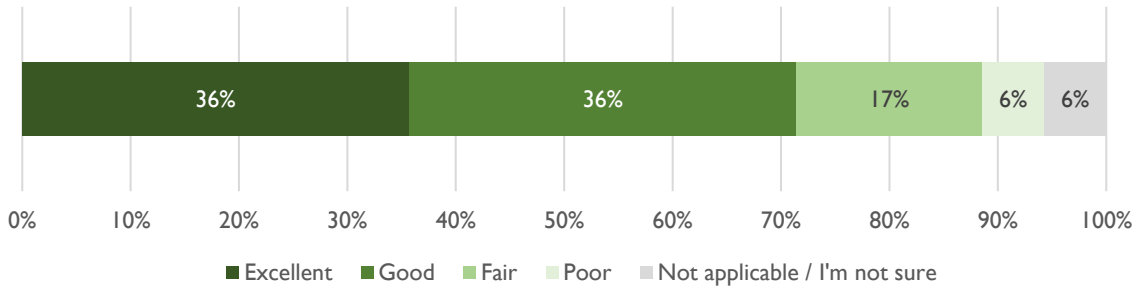
Thinking about the service you have received from the City of San José for your environmental reviews in the past 3 years, how would you describe the timeliness of the environmental review process? (n: 71)



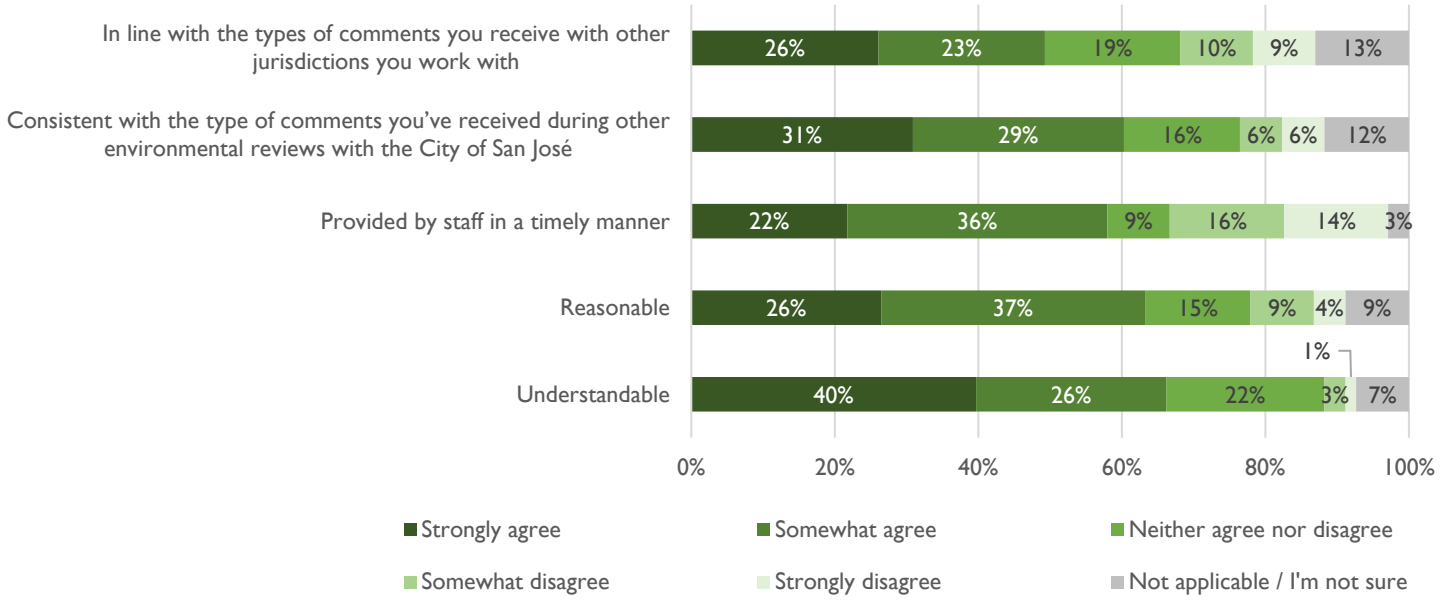
Thinking about the service you have received from the City of San José for your environmental reviews in the past 3 years, how well did staff communicate expectations for each of the following areas? (n: 70-71)



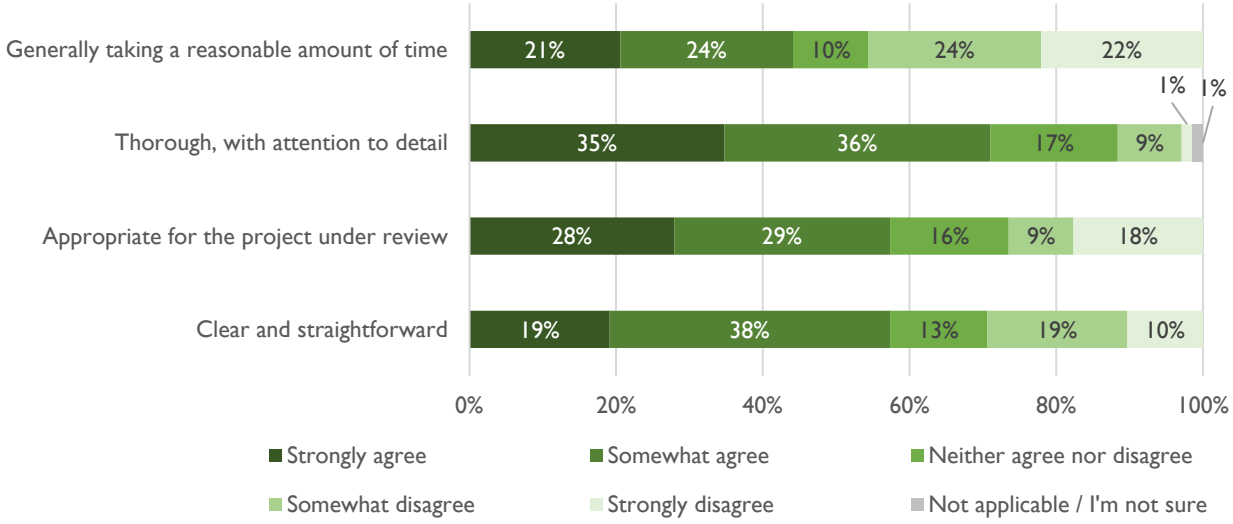
How would you rate the knowledge and expertise of the City of San José environmental review staff that you have worked with? (n: 70)



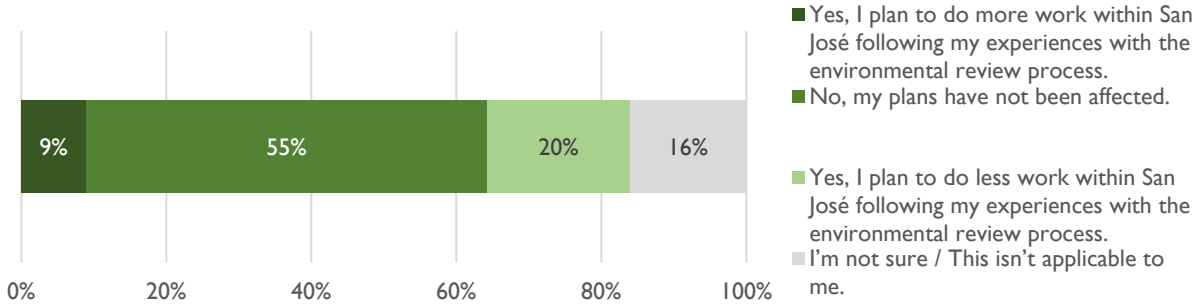
Would you say the comments on drafts you've received from City of San José staff during the environmental review process were (n: 68-69)



Would you describe the overall environmental review process in the City of San José as (n: 68-69)



Have your experiences with the environmental review process in the City of San José impacted your potential future work within the city? (n: 56, excludes City staff)



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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

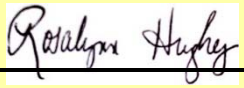
Memorandum

TO: JOE ROIS
CITY AUDITOR

FROM: Chris Burton

SUBJECT: RESPONSE TO AUDIT

DATE: March 17, 2022

Approved  Date 3/18/2022

BACKGROUND

The Administration reviewed the report from the City Auditor's office entitled: Better Project Management and Reviewing Resources Can Improve the CEQA Process. The report contains 12 recommendations to improve the Department of Planning, Building, and Code Enforcement's environmental review process to reduce project timelines. This memorandum includes the Administration's responses to each recommendation, work required to implement each recommendation, and projected dates for completion.

RECOMMENDATIONS AND RESPONSE

Finding 1: Improved Internal Processes Can Help Manage Environmental Reviews

Recommendation #1: To improve the coordination of reviews, the Department of Planning, Building and Code Enforcement should:

a. Develop a training plan that includes both formal and informal training options on project management, environmental review, and entitlement review, and

b. Expand the model in which planners handle both the entitlement and environmental reviews, with a division dedicated to projects with more complex environmental review.

Administration Response: The Administration agrees with this recommendation.

Response to Recommendation 1.a.: Building from the recommendations in the 2016 Management Partners Report, and as part of the Development Services Transformation work plan, in April 2019, staff developed a CEQA Process Improvements strategy. Items implemented

and in continued use today include: 1) elimination of the "fire wall" practice for CEQA documents, so applicants have information to alter design to reduce mitigations; 2) a published environmental consultant list consisting of pre-qualified CEQA consultants from which applicants can choose; this provides more qualified consultants resulting in higher quality documents and reduced review times; 3) an Environmental Roundtable ; 4) bi-monthly staff trainings on CEQA basics, advanced CEQA concepts, and implementation of the City's Transportation Analysis Policy. PBCE also periodically invites outside experts to give trainings on topics such as historic preservation and analysis of greenhouse gas emissions. However, due to high staff turnover and rapidly changing regulatory environment, bi-monthly trainings do not always prepare planners for the range of issues encountered in their role. PBCE will continue and expand the bi-weekly training sessions to include focus areas, such as preparation of a CEQA exemption, how to prepare an adequate project description for environmental review, and best practices for project management.

For example, in November 2021, a two-day training on historic preservation was conducted. Other outside training opportunities include regular attendance at CEQA updates held by the Association of Environmental Professionals (AEP) and the American Planning Association (APA), and annual trainings on National Environmental Policy Act (NEPA) compliance held by the U.S. Department of Housing and Urban Development. Due to a shortage of funds for staff training in PBCE, most management staff use Professional Development funds to attend the conferences. The Administration will seek opportunities for free or low-cost training and will seek funding for ongoing outside training. The Environmental Review team will seek opportunities for free or low-cost training and will seek funding for ongoing outside training.

Response to Recommendation 1.b.: Starting in 2017 and continuing through 2019, the Environmental Review Team piloted joint implementation and environmental review (joint project management) for 12 projects. These projects included small to medium-sized projects including utility projects, mixed-use projects, and a data center. None of the projects required an EIR. One of the Supervising Planners on the Environmental Review Team is experienced with entitlement reviews; this staff member is instrumental in cross-training planners on both environmental review and entitlement reviews. The experience of joint project management reduces opportunities for errors and miscommunication, establishes one point of contact for the project, and is beneficial to planner's professional development which in turn builds experience in the Department.

With the hiring of three environmental review planners since October 2021, the Environmental Review team is positioned to pilot the joint project manager role for larger projects with increased complexity, including those requiring EIRs.

Target Date for Completion: Recommendation 1.a., Q4 FY 21-22 and then ongoing; Recommendation 1.b.: Q4 FY 21-22 and then ongoing.

Recommendation #2: To improve the project management of environmental reviews, the Department of Planning, Building and Code Enforcement should develop a set of procedures that includes:

a. Having regularly-held meetings with key stakeholders,
b. Establishing timelines with all key milestones, and
c. Expectations on project roles and responsibilities for the environmental review planner, entitlement planner, and other City departments and teams (e.g., how project changes should be communicated, who is responsible for the overall timeline).

Administration Response: The Administration agrees with this recommendation.
The Environmental Review team has established an Environmental Consultants Roundtable that meets quarterly. In this forum trends in the industry, best management practices and practical solutions to common problems are discussed, in addition to standard requirements for completing environmental review documents for the City.

In response to the 2016 Management Partner's report and as part of the Development Services Transformation work plan, staff drafted Guidelines for Environmental Consultants in early 2019 and presented a draft to environmental consultants for comments in mid-2019. This process was delayed due to the pandemic and pivot to remote working. However, staff provided draft guidance on schedule expectations and communication at the February 23, 2022 Environmental Consultant's Roundtable. Staff is now finalizing the Guidelines for environmental consultants and is preparing a separate document with Standard Operating Procedures (SOPs) for planners.

The Guidelines for environmental consultants will set expectations for roles, expected deliverables, schedule maintenance, and quality of work. The SOPs for internal use explain procedures and expectations for planners during environmental review. They include protocol for coordination with other Development Services partners and other City departments, such as the Department of Public Works and Environmental Services Department. They also include protocol for communicating with the implementation planner updates on the environmental review timeline.

Green: Staff is finalizing Guidelines for consultants and SOPs for internal City staff and this work is anticipated to be complete by June 2022.

Target Date for Completion: Q4, FY 21-22.

Recommendation #3: To improve performance measurement and guide project management, the Department of Planning, Building and Code Enforcement should set performance targets for environmental review, including timeliness overall and timeliness of achieving milestones, and measure performance against the targets.

Administration Response: The Administration agrees with this recommendation.
As part of the Development Services Transformation performance measures were developed to track progress for planning, including environmental review. Building upon the upgrade to AMANDA 7 and other technology improvements, staff will modify these measures and incorporate into a dashboard.

Green: Staff will continue to refine performance targets for environmental review, including timeliness overall and timeliness of achieving milestones, and measure performance against the targets. This data will be included in an environmental review dashboard.

Target Date for Completion: Q3, FY 21-22 and ongoing

Recommendation #4: To promote consistency of environmental review data entry, the Department of Planning, Building and Code Enforcement should:

a. Update and expand AMANDA guidelines and related expectations around data entry for areas such as recording of staff hours, use of entry codes, and use of comments, and

b. Develop training for staff about the AMANDA guidelines.

Administration Response: The Administration agrees with this recommendation.

Recommendation 4.a.: Since the upgrade to AMANDA 7 in early 2019, staff developed training guidelines for the newly created Environmental Review (ENV) folder. The guidelines have been useful in training new staff members that joined the team in late 2021 and early 2022. These guidelines will be updated based on feedback from planners concurrently with the update to the AMANDA 7 ENV folder (Recommendation #5).

Recommendation 4.b.: After implementation of the ENV folder, staff held a training on use of the folder and implemented weekly office hours to respond to questions regarding use the folders. A comprehensive training using the existing AMANDA 7 Guidelines will be held for new planners, and recurring refresher trainings will be conducted. In addition to training on the ENV folder, planners working as joint project managers will also be trained on the effective use of the Development Review (DEV) folders in AMANDA. When the guidelines are updated to reflect changes to the ENV folder, new trainings will be held.

Green: Staff will update the AMANDA 7 guidelines concurrently with the update of the ENV folders. New planners will provide insight into how the guidelines and training can be improved for greater usability. Training on AMANDA 7 will continue with the current guidelines, and new trainings will be held with the updated guidelines.

Target Date for Completion: Recommendation 4.a.: Q3 FY 21-22 and ongoing.

Recommendation #5: To effectively track project milestones, the Department of Planning, Building and Code Enforcement should establish a mechanism for consistently capturing necessary milestone data either using AMANDA or another tool, and update appropriate guidelines as necessary.

Administration Response: The Administration agrees with this recommendation.
As part of the Transformation Team AMANDA 7 roll-out in early 2019, staff created the new ENV folder to track processes and time separate from other entitlement folders based on input from the Environmental Review Team. The creation of the ENV folder improved time tracking and invoicing. Staff will evaluate improvements to the ENV folder to increase usability and data collection based on experience using the ENV folders over the past three years.

Green: Environmental Review Team planners will provide feedback and suggestions on improvements to the AMANDA ENV folder to improve project tracking. Updates to the ENV folder depend on the availability of Information Technology staff to implement and test the changes. This work is part of the Development Services Transformation work plan.

Target Date for Completion: Q2 FY 22-23.

Recommendation #6: To make the environmental review process more standardized and consistent, the Department of Planning, Building and Code Enforcement should update and expand relevant tools and templates for the environmental review team, as well as develop related procedures on the expected usage, including:

a. Establish a standard project schedule tracker that staff are expected to use for projects, and
b. Create additional tools and templates to support project management, such as agenda templates for meetings with different stakeholders, a consolidated list of the City's thresholds of significance, and City resolution templates for adoption for the different types of environmental reviews.

Administration Response: The Administration agrees with this recommendation.

Recommendation #6.a.: In 2017, staff developed draft standard review timelines based on the type of environmental review document and distributed these timelines to environmental consultants to create project schedules. These timelines set expectations for City review times when consultants prepare their scope of work. However, these review timelines need to be reviewed and updated. The Environmental Review Team will update the review timelines for

staff and consultants and provide them in the Guidelines for environmental consultants prepared in response to Recommendation #2.

Recommendation #6.b.: Environmental Review Team staff developed standard templates for certain types of documents, such as for Mitigation Monitoring and Reporting Program (MMRP) compliance, EIR resolutions, and some exemptions. Environmental consultants currently prepare reports based on their templates and format with guidance from the City and the CEQA Guidelines. Environmental Review team staff are currently developing an Initial Study template. Staff will complete work on all templates to support project management.

Green: Recommendation 6.a.: The Environmental Review Team will update and finalize the project review timelines for staff and consultants as part of the Guidelines for environmental consultants. Recommendation 6.b.: Staff will also create agenda templates for meetings, develop a consolidated list of the City's thresholds of significance, and create resolution templates for adoption of the different types of environmental reviews.

Target Date for Completion: Recommendation 6.a.: Q3 FY 21-22, Recommendation 6.b.: Q4 FY 21-22.

Recommendation #7: To educate City staff about available resources and expectations for the environmental review process, the Department of Planning, Building and Code Enforcement's environmental review team should conduct annual trainings for City staff in other departments or teams.

Administration Response: The Administration agrees with this recommendation. The Environmental Review team will continue and expand training sessions for other Development Services partners to educate staff about their role and expectations in the environmental review process. Two types of trainings will be held: 1) trainings focused on staff in Departments that are Development Services partners that participate in the environmental review process for private development projects (Department of Public Works, Department of Transportation, and Environmental Services Department), and 2) trainings focused on Departments that seek environmental review for public projects, including references for City Council memos.

Green: The Environmental Review team will conduct annual trainings for City staff in other departments or teams.
Administration will re-start and increase the number of trainings for both Development Services partners reviewing private development projects and other City Departments seeking environmental review for public projects.

Target Date for Completion: Start Q4 FY 21-22, then annually.

Finding 2: Better Management of Consultants Can Help Keep Projects on Track

Recommendation #8: To better manage the work done by environmental consultants, the Department of Planning, Building and Code Enforcement should:

a. Establish project management requirements for the relationship with consultants, including regular check-ins, expectations for communication with the consultant, and guidelines for dealing with delays, and

b. Consider instituting a list of required consultants.

Administration Response: The Administration agrees with this recommendation.

Recommendation 8.a.: The Environmental Review team is developing Guidelines for environmental consultants which address this recommendation and Recommendation #2. This has been part of ongoing discussions with consultants. The Guidelines will include expectations for meetings during project milestones and regular updates on the project schedule, including delays. The Guidelines will also include protocols for addressing late submittals and work that does not meet CEQA standards. At the Environmental Consultant's Roundtable on February 23, 2022, staff presented draft requirements for preparation and maintenance of project schedules, including expectations regarding communication about delays. These requirements will be incorporated into the Guidelines for consultants and will be made available to the consultants on the City's website. Any amendments or changes to the Guidelines will also be discussed at subsequent Environmental Consultant Roundtable meetings.

Recommendation 8.b.: In response to the recommendations in the 2016 Management Partners report, the City conducted a Request for Proposals (RFP) process in mid-2019 to establish a list of approved environmental consultants for private projects. The intent of this list is to recommend environmental consultants to prospective applicants and hold environmental consultants accountable for their quality of work and performance. During the next RFP process in 2023, staff will consider instituting a list of required consultants in conjunction with the City Attorney's Office.

Green: Recommendation 8.a.: Staff is finalizing the Guidelines for consultants and will present a revised draft for review by a focus group of environmental consultants in spring 2022. The City will consider the consultant's feedback and prepare a final draft to be published by June 2022. Recommendation 8.b.: Coordinating with the City Attorney's Office, staff will consider instituting a list of required consultants as part of the next RFP process in 2023.

Target Date for Completion: Recommendation 8.a.: Guidelines to be complete by Q4 FY 21-22. Recommendation 8.b.: Consideration of process for establishing a required list by Q3 FY 22-23.

Recommendation #9: The Department of Planning, Building and Code Enforcement should finalize and publish guidelines about the City's CEQA requirements and process for environmental consultants to help them prepare environmental documents according to the City's standards.

Administration Response: The Administration agrees with this recommendation. Staff is finalizing Guidelines for environmental consultants to set expectations and roles during the environmental review process to respond to Recommendations #2 and #8. After completion of Guidelines for consultants, the City will draft guidance for the preparation of different types of environmental review documents, which will be attached to the Guidelines.

Green: The City is finalizing Guidelines for environmental consultants.

Target Date for Completion: Q4 FY 21-22.

Finding 3: Staffing and Workload Should Be Reviewed to Ensure the Program Is Sufficiently Resourced

Recommendation #10: To ensure costs are appropriately recovered, the Department of Planning, Building and Code Enforcement should:

a. Review and update guidelines for how to track time spent on environmental reviews and what activities should be billed, and

b. Review the cost recovery calculation for environmental review fees.

Administration Response: The Administration agrees with this recommendation. Responses to specific recommendations are included below:

Recommendation 10.a: The SOPs for planners in response to Recommendation #2.c. will include protocol for logging time. To ensure planners track time accurately, time must be logged in daily or weekly. The Environmental Review Team is piloting a system where planners use AMANDA to prepare bi-weekly reports of hours logged when completing their timecards. The internal SOPs for planners prepared in response to Recommendation #2.c. will include protocols for time tracking using best practices from the Transformation Team's efforts to improve time tracking throughout the Planning Division.

Recommendation 10.b.: Staff will review cost recovery calculations for environmental review during a review of fees prior to preparation of an updated fee schedule. The Administration will move to ensure a standard AMANDA folder categorization that enables the creation of reports to accurately demonstrate the status of permits throughout the process spanning intake to

completion. This would be the first step in being able to accurately determine cost-recovery on an annual basis. This would be in conjunction with the current undertaking of revamping the Planning Division's chart-of-accounts to provide improved budget and expenditure reporting on a monthly and annual basis. Staff will start this work using the current AMANDA 7 ENV folder and implementation of SOPs for time tracking in Recommendations #2.c. and #10.a.

Green: Time-tracking policies and guidelines will be included in the SOPs for planners developed in response to Recommendation # 2.c. Protocol for time tracking will be implemented and revised based on best practices. Review of cost recovery calculations will occur as more data is gathered using the AMANDA ENV folder.

Target Date for Completion: Recommendation 10.a.: Q4 FY 21-22, Recommendation 10.b.: Q3 FY 22-23.

Recommendation # 11: To reduce workload on environmental review planners, the Department of Planning, Building and Code Enforcement should re-assign invoicing and other administrative duties to support staff, to the extent possible. This could include filling the administrative position assigned to the environmental review team.

Administration Response: The Administration agrees with this recommendation contingent on the filling of the vacant support staff position for environmental review and historic preservation.

Green: The Environmental Review team will coordinate and train current support staff to help with intermittent administrative tasks as available. Staff will coordinate with Human Resources to prioritize recruitment for the vacant environmental review/historic preservation support staff position.

Target Date for Completion: Q1 FY 22-23**.**

Finding 4: Options for City-Initiated Environmental Analysis Should Be Regularly Weighed as Part of Strategic Planning

Recommendation # 12: To enable the City Council to make informed decisions about strategic planning, the Department of Planning, Building and Code Enforcement should develop a process to regularly present to Council options for analyses that could streamline environmental reviews as part of the City's comprehensive planning efforts. This should include resources and tentative timelines needed to complete the work.

Administration Response: The Administration agrees with this recommendation. The General Plan annual review process, the General Plan Four-Year Review process, and Urban Village planning processes are forums where new ideas for streamlining environmental reviews can be

presented to Council and other Departments. Additionally, program environmental review can be considered at the start of proposed planning policy work, such as area development policies.
Green: The Environmental Review team will develop a protocol to provide information on opportunities to streamline environmental reviews as part of the City's comprehensive planning efforts.

Target Date for Completion: Q2 FY 22-23.

CONCLUSION

The Administration thanks the City's Auditor's Office for the comprehensive review of the City's environmental review process. The audit recommendations will guide PBCE's ongoing effort to improve communication among stakeholders, increase quality and legal defensibility of documents, improve cost-recovery, and reduce timelines for environmental review. The recommendations also build on previous recommendations from the 2016 Management Partners report and the Development Services Transformation work plan which have guided recent process improvements to the environmental review process such as publishing a list of pre-qualified consultants and implementation of the ENV folder in the City's AMANDA database. Staff appreciates the effort and professionalism in conducting this audit and will work diligently to implement the recommended actions.

/s/
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