

memorandum

date October 7, 2019

to Brian Lockwood, General Manager, Pajaro Valley Water Management Agency (PV Water)

from Jill Hamilton, Environmental Science Associates

subject Final EIR Process, CEQA Requirements for the PV Water Board of Directors

The following provides information on the processes for certifying an environmental impact report (EIR) and approving a project with regard to the requirements of the California Environmental Quality Act (CEQA). Applicable sections of the CEQA statutes (in the Public Resources Code) and Guidelines (in the California Code of Regulations) are referenced.

FINAL EIR PROCESS (Public Resources Code Section 21091(d), CEQA Guidelines Section 15088, 15132)

Following circulation of a Draft EIR, the lead agency is required to evaluate comments on the Draft EIR and prepare written responses for inclusion in the Final EIR. CEQA recognizes that public agencies cannot produce a perfect Draft EIR; thus, a key purpose of the responses to comments process is to bring deficiencies in the Draft EIR to the attention of decision makers to produce a better EIR.

The College Lake Integrated Resources Management Project Responses to Comments on the Draft Environmental Impact Report (Responses to Comments document) was published on September 30, 2019. The Responses to Comments document and the *College Lake Integrated Resources Management Project Draft Environmental Impact Report* comprise the Final EIR for the Project.

Disposition of the Final EIR

When a Final EIR has been completed and certified and the project has been approved, the lead agency must:

- File a copy of the EIR with the planning agency of any city or county that will be affected by the project or where significant environmental effects would occur;
- Include the Final EIR as part of the regular project report that is used in the existing project review and budgetary process;
- Retain a copy of the Final EIR as a public record; and
- Provide copies of the final EIR to responsible agencies.

Schedule and Distribution to Public Agencies Commenting on the Draft EIR

At least 10 days before certifying a Final EIR, the lead agency must provide any public agency that commented on the Draft EIR with a written proposed response to the agency's comments (CEQA Guidelines Section 15088(b)).

CERTIFICATION OF THE FINAL EIR (Public Resources Code Section 21083, CEQA Guidelines Section 15090)

After completing the Final EIR and before approving a project, the lead agency must certify that:

- The Final EIR has been completed in compliance with CEQA;
- The Final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project; and
- The EIR reflects the lead agency's independent judgment and analysis.

PROJECT APPROVAL (Public Resources Code Section 21083, CEQA Guidelines 15092)

After a lead agency has certified an EIR and the decision-makers have reviewed the information in it, the agency considers whether to approve the project. A public agency may not approve or carry out a project for which an EIR has been prepared unless either:

- The project as approved will not have a significant impact on the environment; or
- The agency has eliminated or substantially lessened all significant impacts when feasible (as demonstrated in the Findings) and has determined that any remaining significant effects are acceptable when balanced against the project's benefits (as demonstrated in the Statement of Overriding Considerations).

FINDINGS (Public Resources Code Section 21083 et seq; CEQA Guidelines 15091)

CEQA requires that no public agency shall approve a project for which an EIR has been certified which identifies significant environmental impacts unless the agency makes one or more written findings for each of those significant impacts, accompanied by a brief explanation of the rationale behind each finding (supported by evidence in the record). The possible findings are:

- (1) Changes or alterations have been incorporated into the project that avoid or substantially lessen the significant effect as identified in the Final EIR
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the lead agency. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

The Findings must describe the specific reasons for rejecting identified mitigation measures and project alternatives.

MITIGATION MONITORING AND REPORTING PROGRAM (Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091)

One of the fundamental purposes and requirements of CEQA is to reduce significant impacts on the environment when it is feasible to do so. To implement this requirement, CEQA require a lead agency to adopt mitigation measures that are fully enforceable through permit conditions, agreements, or other measures, and to adopt a mitigation monitoring and reporting program (MMRP). The purpose of the MMRP is to ensure that the measures are implemented by providing a means to track compliance.

The MMRP must be adopted when the lead agency adopts Findings.

STATEMENT OF OVERRIDING CONSIDERATIONS (Public Resources Code Section 21083 et seq; CEQA Guidelines Section 15093)

CEQA requires lead agencies to balance the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a project against its unavoidable environmental impacts when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a project outweigh the unavoidable adverse environmental effects, the adverse environmental impacts may be considered “acceptable.” The lead agency must state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The statement of overriding considerations must be supported by substantial evidence in the record. The statement of overriding considerations should be included in the record of the project approval and should be mentioned in the notice of determination.

15094. NOTICE OF DETERMINATION (Public Resources Code Sections 21083 and 21152; CEQA Guidelines Section 15094)

The lead agency must file a notice of determination (NOD) within five working days after approving the project. The NOD must present the determination of the agency as to whether:

- The project in its approved form will have a significant effect on the environment;
- An EIR was prepared and certified pursuant to the provisions of CEQA;
- Mitigation measures were made a condition of the approval of the project; and whether
- Findings, a statement of overriding considerations, and a mitigation monitoring plan/program were prepared.

If the lead agency is a state agency, the lead agency must file the NOD with the Office of Planning and Research. If the lead agency is a local agency, the local lead agency shall file the NOD with the county clerk of the county or counties in which the project will be located.

The NOD and Statute of Limitations for Legal Challenges to the EIR

The filing of the NOD by the lead agency and the posting of the NOD by the Office of Planning and Research or county clerk starts the 30-day statute of limitations for legal challenges to the EIR. If the NOD is not filed and posted as required, a 180-day limitation period applies.

The NOD and Payment of Fish and Game Code Filing Fee

A filing fee to provide funding for the state Department of Fish and Wildlife must be paid at the time the NOD is filed.