



COMMUNITY DEVELOPMENT AGENCY

DEVELOPMENT SERVICES DIVISION

<http://www.edcgov.us/DevServices/>

PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667

BUILDING

(530) 621-5315 / (530) 622-1708 Fax

bdgdept@edcgov.us

PLANNING

(530) 621-5355 / (530) 642-0508 Fax

planning@edcgov.us

LAKE TAHOE OFFICE:

3368 Lake Tahoe Blvd., Suite 302

South Lake Tahoe, CA 96150

(530) 573-3330

(530) 542-9082 Fax

tahoebuild@edcgov.us

TO: Board of Supervisors

Agenda of: August 6, 2013

FROM: Roger Trout, Development Services Division Director

DATE: July 30, 2013

RE: **Public Notification Requirements**

On April 2, 2013, the Board of Supervisors discussed the policies for public notice that require direct mailing to all owners of real property within 500 feet of a new planning development project or a zoning change.

The concern was initially raised because members of the public received notice of new land development applications through the Notice of Preparation (NOP) notification process and challenged the adequacy of a 500 foot notification standard. The Board directed staff to report back with protocols, thresholds, proposed signage changes and other recommendations for better notification to property owners of upcoming projects.

Issues with current public notification process:

1. 500 feet may need to be expanded to 1000 feet, half-a-mile, or up to one mile to provide additional notice. This could also vary depending on the size or scope of the application.
2. State and local regulations require public notice of public hearings only 10 days in advance, leaving limited time to review the application, staff report, conditions, and California Environmental Quality Act (CEQA) documents.
3. Public notice for CEQA Notices of Preparation is not required. The NOP is a “scoping” process and can be frustrating to the public unaccustomed to the land use application process and CEQA process.
4. Earlier public notice has often been requested by individuals and community groups. Some information is available on the Planning web page, but it is limited.
5. Direct mailing to property owners does not adequately notify non-property owners like people renting homes or apartments, mobile home parks, and people purchasing property that have not taken title when the public notice is provided.

Regulations

State law and local ordinances require public notice for certain actions, including public hearings and CEQA notices. State law sets minimum standards that must be met. Local ordinance must meet state standards but can provide additional notice above and beyond, but not less than, State standards. The Board of Supervisors sets the local ordinance standards. The County's current notification procedures exceed the minimum State standards because:

1. The State standards require either direct mailing or notification in a newspaper, and the County does both.
2. The State standard is a 300 foot notification distance and the County requires a 500 foot notification distance.

Government Code 65000-66035 is known as the Planning and Zoning Law and sets forth minimum noticing requirements for public hearings. The public noticing standards can vary by the type of land use permit being considered.

Section 65090 sets specific standards for some General Plan and Zoning amendments. It requires a legal advertisement in a newspaper of general circulation at least 10 days prior to the hearing. If there is no such newspaper, the public notice can be posted in three public places within the jurisdiction.

Section 65091 requires additional notification for General Plan and Zoning amendments when specific uses of property are affected, and for Variances, Special Use Permits, and other equivalent permits. It requires a public notice at least 10 days prior to a public hearing by:

1. Notice to the property owner;
2. If a Subdivision, notice to any owner of mineral rights who has recorded a notice of intent to preserve the mineral right;
3. Notice to local agency providers of water, sewer, streets, schools, or other essential facilities that may be affected;
4. Notice to all property owners within 300 feet;
5. Notice in a newspaper of general circulation or posting in at least public places within the boundaries of the local agency, including one public place in the area directly affected by the proceeding.

The following is a list of County Code sections that require public notification for public hearings:

- Special Use Permits, Variance, and Specific Plans (17.22.200)
- Planned Developments (17.04.015)
- Design Review (no public notice requirements identified within Chapter 17.74)
- Zoning Amendments (17.10.040)
- Parcel Maps (16.48.065)
- Tentative Maps (16.24.085)

CEQA has separate public notice requirements. Public notifications vary based on the type of CEQA document being prepared. Statutory and Categorical Exemptions have ten day public

notice periods; Negative Declarations and Mitigated Negative Declarations have 30 day public notice periods; and Environmental Impact Reports (EIR) have all of the following: a 30 day NOP period, a 45 day public review period for the Draft EIR, and a ten day notice for the Final EIR.

CEQA and the County Environmental Manual (Resolution 61-87) do not require an NOP to have any public notification, primarily because the NOP is directed at local and state agencies. CEQA requires the NOP to be sent to State Office of Planning and Research, responsible and trustee agencies (as identified within CEQA), and federal agencies involved in funding or permitting

However, section 15083 of the CEQA Guidelines describes the option for Early Public Consultation: “The purpose of this section is to authorize and encourage, but not require, early consultation with the public. Although public consultation prior to completing the draft EIR is permissive under CEQA, this step is recommended as a way of avoiding controversy or resolving controversy early in the process.”

With this purpose in mind, the Planning Division notifies the public of an NOP just like a public hearing on any development application.

For purposes of this report, a land development application would include: Design Review, Special Use Permit, Variance, Tentative Map (including Parcel Map), Planned Development, Rezone, and General Plan Amendment. Land development applications are processed in the following series of steps. The steps are listed in their normal sequence, but some steps are often done concurrently:

1. Application submittal to County with application forms, submittal material, and fees.
2. Application review by staff for “completeness” (within 30 days of submittal).
3. Application review by staff for CEQA determination (whether exempt, negative declaration, or EIR required).
4. Application distributed to local and state agencies for comments. Comments received are reflected in the staff report, environmental documentation, conditions, and findings at future public hearing.
5. Staff prepares staff report, findings, conditions, and environmental documentation.
6. Staff schedules public hearing and provides public notices as required.
7. Public hearing (Zoning Administrator, Planning Commission, Board of Supervisors).

Under current ordinances, the majority of land development applications are only required to have public notice 10 days prior to the public hearing (Step 7). In addition to being posted on the official agenda a minimum of 72 hours in advance, the current ordinances generally require that a legal advertisement be placed in a newspaper of general circulation and mailed notification to all property owners within 500 feet of the land development property boundary, ten days in advance.

In circumstances where an environmental document is prepared, such as an Exemption, Negative Declaration, Mitigated Negative Declaration, or an EIR, separate and additional notice is required pursuant to CEQA.

When the County determines that a land development application will require an EIR, the process begins with an NOP. The recent release of NOPs for new Specific Plan applications in western El Dorado County included additional mailing to all property owners within 500 feet and to those that had requested to be notified.

Analysis

Staff has prepared the following options for better notification to property owners of upcoming projects for discussion purposes. Additional options may be available, but these cover the normal public notification process related to land development.

Option 1: Expand 500 foot mailed public notification distance.

This option would increase the distance that the current public notice is given to property owners. The County software that generates a mailing list can easily be adjusted to accommodate any particular distance. The increased cost of notification can be charged to the applicant (this would require Board approval of a revised fee schedule for some land development applications).

Option 1 could be customized to increase public notification for only certain land development applications, or all of them. However, the application type alone does not indicate the significance or magnitude of the land development project. For example, a Special Use Permit could be as minor as an expanded home occupation or as major as a large new church, private school, or automobile dismantling yard. A Tentative Map could be for a handful of lots or for hundreds of lots. A General Plan Amendment or Rezone could apply to a single parcel of land less than an acre in size, or it could affect thousands of acres. The application type alone is not a good indication of the need for additional public notification.

Expanded public notification for public hearings would require amendments to the applicable County Code sections of Title 17 (Zoning) and Title 16 (Subdivisions).

Option 1 appears to address most issues with public notification except that it only applies to public hearings and does not provide early public notice (such as when an application is submitted) or the fact that non-property owners may not be notified.

The challenge with Option 1 is to establish the “particular distance” that is appropriate for public notice of public hearings. The State standard is 300 feet. El Dorado County established a 500 foot standard. Expanding to 1,000 feet or up to a mile seems reasonable and achievable, but there will always be members of the public that will not receive notification because of distance.

Option 2: Provide expanded notice for Notices of Preparation.

The issue of increasing public notification was strongly influenced by new Specific Plan and Tentative Map applications in western El Dorado County. These applications were determined to require an EIR and as part of that process an NOP was released. This resulted in public

comments that the notification distance was not sufficient. If this is the primary issue of concern, then staff would recommend changing the policy of public notification on NOPs.

This would resolve some issues of notification by providing more public information on the most significant land development applications (those that require an EIR) and providing the public notice earlier in the process. Option 2 could be implemented by Board Policy, or by amending Resolution 61-87 (the County Environmental Manual), and could set any standard for public notification. This option generally solves the issues of providing better notice for NOP's, except the notification to non-property owners. Option 2 has the same challenge as Option 1, in that the "particular distance" that the notification would be deemed adequate is not known.

Option 3: Provide earlier notice of new land development applications.

This option would provide an earlier notification of some or all of land development applications for the express purpose of informing the public earlier. This option could be implemented by providing a notice in the newspaper and/or notice to property owners within a particular distance of the proposed project at one of the beginning steps in the land development process. Staff's determination of a complete application (Step 2) could be an appropriate time to provide this early notice. Once an application is determined to be complete, it would be in a format that is ready for the public to review, discuss, and comment. However, the County's staff would not have a staff report, with analysis, conditions, and findings, or a prepared environmental analysis. In addition, the public may not understand that a determination of a complete application is a term with specific meaning in law and it may cause confusion. The public could be frustrated both with early public notices as well as apparently "late" public notices.

To minimize confusion and maximize information dissemination, early public notice could be provided at a later step in the development process, such as Step 4, when local and state agencies are noticed. This particular step is implemented by a letter from the County which requests comments on the particular land development application from targeted agencies. The County could revise its policy and also send a similar letter to property owners within a set distance of the project. This may provide a better opportunity for public notice simply because it may be better understood what "requests for comments" means. The letter could also explain the land development process.

Option 3 may help provide the public early notice of land development applications, but does not address the public notice for public hearings or Notices of Preparation. This option does not provide better notice to non-property owners.

Option 4: Provide more land development application information on-line.

The current County website information includes information on all land development applications. However the information is limited, subject to change without notice, and is not simple to access. The County website does offer a subscription service that allows a user to receive email notices when new applications are submitted. An improved website, with maps and better information, could improve the public's ability to monitor land development

applications in the County. This option has long been a goal of Planning and other land use development Departments', but funding and competing priorities have kept this from being completed. The Board has the ability to direct staff to return with a plan (project plan, budget, timing, etc.) if this is deemed a priority. It is also anticipated that upon completion of the County's FENIX program, a new land management software system would be researched and deployed, which would likely include web-based solutions to this aspect of additional public notification.

Option 4 does provide some additional opportunities for public notice, but does not resolve most issues like expanding the notification distance for public hearings and Notices of Preparation. It would improve notice to non-property owners better than other options previously listed, but not as well as Option 5.

Option 5: Post notice on the property proposed for development.

This option would require, at some point in the land development application process, the applicant to post the property to provide additional public notice. This option provides the best solution to notification of non-property owners and provides a different approach for improved notification of nearby property owners. Prominent posting of the property that is visible from local roads would attract attention from potentially significant additional members of the public.

The policy or ordinance to enact this option would address details and standards for posting the public information, including: when the property must be posted, with what information, where the information is posted, and the number, size, and font size of the posting.

The County of Monterey has an ordinance that requires posting of the property for public notice. It is just an example of information that could be incorporated into the County Ordinance. An excerpt is attached for discussion purposes.

Sacramento County has a similar program that requires the applicant to pay a fee (about \$350) for the County to post the sign (contracted out to a local vendor). The sign would meet the County standards for location and looks similar to a real estate sign.

This option could also be customized based on application type, such as described in Option 1, or be limited to land development applications with NOP's and EIR's as described in Option 2.

Option 5 improves on the County public notification process and could be used for public hearings and Notices of Preparation. It is the most effective option for providing public notice to non-property owners. It also provides more notice to the public if posted in a prominent location, such as on major roads.

If the goal is to provide earlier public notice, then the County's revised ordinance should specify that the posting of the property is to occur within approximately 30 days after project application submittal. In this way, this option might provide better and earlier public notice than current County ordinance and the other options described previously.

Option 6: Provide notification to property owners and non-property owners.

An option to provide better notification to non-property owners is to send notices to not only the property owner, but also the physical address of the property. This information is generally available from the Assessor's parcel information. This would allow additional notification to people who are renting a home, but may not capture apartment complexes or mobile home parks. This option may need to be investigated further to identify the available information that might be used to provide better notifications by mail.

Option 6 may be used in conjunction with other options to improve public notifications that use direct mail.

Option 7: Applicant outreach plan requirement.

It has always been the applicant's responsibility to conduct their own public outreach in order to resolve controversy early and provide the public with early information on a land development application before the County staff schedules a public hearing. The County could elevate this practice to a requirement by amending the County policy and requiring an "outreach plan" as part of the application submittal.

The outreach plan would describe what outreach efforts the applicant would do to engage the public, stakeholders, and various agencies regarding their application proposal. The County could set some minimum standards for an outreach plan, which could include outreach meetings, posting public notices, direct mailings, etc.

This option puts the applicant on official notice that it is their responsibility to reach out to neighbors and explain the project and process. This process could be combined with other options to provide better public notice of land development applications.

Conclusion

The Board expressed concern that a 500 foot notification was not sufficient, but the issue that generated the concern was an NOP, which by law, does not require notification of nearby property owners.

Option 1 would expand public hearing notice from 500 foot notification to another particular distance.

Option 2 would expand the public notification of Notices of Preparation. Options 3 (early notification of all applications) and Option 4 (improved website information) can also improve public notification and public involvement, but to a limited degree.

Option 5 would require the proposed project site to be posted to provide additional public notification. Posting of the property can improve public notice and public involvement more than

other options because it provides notice to non-property owners and to those that are not within a particular distance of the proposed land development application.

Options 6 and 7 may be combined with other options to proactively improve communication between the applicant, County and the public.

Each option has merit, and a combination of options may be needed to provide better additional public notice.

Recommendation:

Based on public testimony, Board discussion, and recognizing that other options may become apparent, staff proposes a “draft” set of recommendations for the Board to consider and revise accordingly:

Direct staff to return with:

- Resolution of Intention to update the County Zoning and Subdivision Ordinances to:
 - a. Expand the public notice from 500 foot notice requirement to ? (another distance)
 - b. Require the applicant to post the property subject to land development application within 30 days of application submittal
- Draft a Board Policy (or amend Resolution 61-87) so that a Notice of Preparation (NOP) is distributed to the public in the same manner as the requirements for Public Hearings.
- Other ideas or combinations of options?

ATTACHMENT:

Attachment 1: County of Monterey Code of Public Hearings

Attachment 1 – County of Monterey Code for Public Hearings

21.78.040 PUBLIC NOTICE REQUIRED.

A. The notice shall be given in all of the following ways:

1. Notice of the public hearing shall be mailed or delivered at least 10 days prior to the public hearing to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant.
2. Notice of the public hearing shall be mailed or delivered at least 10 days prior to the public hearing to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
3. Notice of the public hearing shall be mailed or delivered at least 10 days prior to the public hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the public hearing.
4. At least three public hearing notices shall be clearly posted at three different public places on and near the subject property. The notices shall be accessible and visible to the public.
5. In-lieu of utilizing the assessment roll, the County may utilize records of the County Assessor or County Tax Collector which contain more recent information than the assessment roll.
6. If the number of property owners to whom notice would be mailed or delivered pursuant to this Chapter is greater than 1,000, the County, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted, at least 10 days prior to the hearing.
7. If the public hearing notice is mailed or delivered pursuant to paragraph (3), the notice shall also be published in at least one newspaper of general circulation within the area, at least 10 days prior to the hearing.

B. The failure of any person or entity to receive notice given pursuant to this Title shall not constitute grounds for any court to invalidate the action on any permit pursuant to this Title for which notice was given (GC 65093).

21.78.050 PUBLIC HEARING NOTICE CONTENTS.

The contents of a public hearing notice shall contain at a minimum the following information:

- A. Date, time and place of the public hearing;
- B. The identity of the Appropriate Authority;
- C. A general explanation of the matter to be considered at the public hearing; and,
- D. A general description, in text or by diagram, of the location of the real property, if any, that is the subject of the public hearing.