

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

A RESOLUTION OF THE SAN BENITO COUNTY BOARD OF)
SUPERVISORS TO ADOPT AN ADDENDUM TO THE)
GENERAL PLAN AMENDMENT (GPA) 09-42 FINAL)
ENVIRONMENTAL IMPACT REPORT AND ADOPT AN)
AMENDMENT TO THE SAN BENITO COUNTY GENERAL)
PLAN HEALTH AND SAFETY ELEMENT (GENERAL PLAN)
AMENDMENT 16-55, POLICY HS-6.9 UPDATE))
_____)

Resolution 2016-92

WHEREAS, the State of California authorizes periodic updates of the local General Plan in order to address changing community conditions, correct errata, resolve policy conflicts, etc.;

WHEREAS, on July 21, 2015 the County certified the General Plan FEIR and adopted the San Benito County 2035 General Plan; and

WHEREAS, the 2035 General Plan establishes “New Community Study Areas” and also establishes a 2.5 mile minimum buffer zone around certain sites handling bulk hazardous materials; and

WHEREAS, the 2.5 mile minimum buffer zone does not take into account topography, climate conditions, or other site-related conditions that may require a greater or lesser buffer than a 2.5 mile buffer zone; and

WHEREAS the New Community Study Area known as the Bolsa Study Area is situated near to a bulk hazardous materials handler, a site condition that may cause the necessary buffer zone to be greater or less than 2.5 miles; and

WHEREAS, prevailing wind and topographic conditions, together with the as yet unknown nature of community land uses in the Bolsa Study Area indicate that a buffer zone should be evaluated on a case by case basis, to determine whether a buffer zone of 2.5 miles adequately ensures community health and safety; and

WHEREAS, the Planning Commission of the County of San Benito reviewed and considered the proposed General Plan Amendment along with all written and oral testimony presented at a regularly scheduled public hearing held on October 19, 2016;

WHEREAS, General Plan Amendment 16-55, for the 2035 Health and Safety Element Policy HS-6.9 update, will substantially comply with requirements of State law regarding General Plan Safety Elements; and

WHEREAS, the Board of Supervisors reviewed and considered the proposed General Plan Amendment (“GPA 16-55”) and the proposed Addendum to the General Plan Amendment (GPA) 09-42 Final Environmental Impact Report (“Addendum”), the recommendation of the Planning Commission, as reflected in Planning Commission Resolution 2016-06, the entire administrative record of the Planning Commission, along with all written and oral testimony presented at a regularly scheduled public hearing held on October 19, 2016,

NOW THEREFORE BE IT RESOLVED that, based on the evidence in the record, the Board of Supervisors of the County of San Benito hereby finds as follows:

Finding 1: That the project was considered within the scope of a previously certified environmental impact report prepared by the County as lead agency in compliance with the provisions of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the San Benito County Implementing Procedures for the California Environmental Quality Act.

Evidence: A program-level environmental impact report (EIR) was prepared for General Plan Amendment (GPA) 09-42, the County 2035 General Plan Update, pursuant to CEQA Guidelines Section 15161, focusing on the changes in the environment that would result from the project. The EIR examined all environmental impacts of the project as compared to the existing environment in the vicinity of the project from both a local and regional perspective. On July 21, 2015, the Board of Supervisors, at a public hearing, considered the proposed EIR, along with the recommended mitigation measures, the mitigation monitoring and reporting program, the statement of overriding considerations, and all findings required by CEQA. The public hearing resulted in the Board of Supervisors' adoption of Resolution 2015-58, certifying the project's EIR, adopting findings required by CEQA, adopting mitigation measures to reduce any significant environmental impacts where feasible, as recommended in the EIR, adopting a mitigation monitoring and reporting program, and adopting a statement of overriding considerations.

Finding 2: That GPA 16-55 is in substantial compliance with GPA 09-42, the County 2035 General Plan Update, the impacts of which were fully and adequately evaluated in the GPA 09-42 final environmental impact report (FEIR).

Evidence: The Resource Management Agency evaluated the proposed General Plan amendment and determined that GPA 15-49 is in substantial compliance with all applicable aspects of the GPA 09-42. All required findings pertaining to certification of the FEIR, identification and evaluation of environmental impacts, and the adoption of mitigation measures, the mitigation monitoring and reporting program, and the statement of overriding considerations were previously reviewed by the Planning Commission, are set forth in Board Resolution 2015-58, and are hereby reaffirmed and incorporated herein by reference.

Policy HS-6.9 instructs that the County, in reviewing proposed plans and development projects, shall consider the impact of development of sensitive land uses on the ability of regulated facilities to continue current operations, federal and state environmental laws and regulations, the degree of hazard associated with individual industrial facilities, the recommendations of the County Fire Marshall and Environmental Health Department, and emergency response, contingency, and other comparable plans submitted to and/or filed with federal, state, or local agencies. Because this program does not specify what action the County would take, environmental impacts cannot be reasonably foreseen. If the County takes action in implementation of this program, CEQA will make environmental review of this action necessary at that time. As this would require future consideration of a text amendment and presently envisions no map amendments, no practical effects on the environment at this time, beyond those analyzed under the GPA 09-42 FEIR, can be reasonably foreseen until the Board of Supervisors takes final action on such amendment and as map amendment sites are identified, at which later time CEQA will necessitate environmental review.

Finding 3: That there are no substantial changes proposed in GPA 16-55 that would require major revisions of the GPA 09-42 FEIR due to the involvement of significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162 and have determined that GPA 15-49 is consistent with GPA 09-42 and does not propose substantial changes that would require revision of the certified FEIR due to the involvement of significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Finding 4: That there are no substantial changes in the circumstances under which the project is proposed to be undertaken that would require major revisions of the previous FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162, evaluated the proposed General Plan amendment, and have determined that GPA 16-55 is consistent with GPA 09-42, and that there are no substantial changes in circumstances under which

GPA 16-55 is proposed to be undertaken that would require revision of the certified FEIR due to the involvement of significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Finding 5: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified showing GPA 16-55 would have one or more significant effects not discussed in the FEIR.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162, evaluated the proposed General Plan amendment and have determined that there is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified, showing that GPA 16-55 would have one or more significant effects not discussed in the FEIR.

Finding 6: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified, showing significant effects previously examined in the FEIR will be substantially more severe than shown in the FEIR.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162, evaluated the proposed General Plan amendment and have determined that there is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified showing significant effects previously examined in the FEIR will be substantially more severe than shown in the FEIR.

Finding 7: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified, showing mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents declined to adopt the mitigation measure or alternative.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162, evaluated the proposed General Plan amendment and have determined that there is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified showing mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents declined to adopt the mitigation measure or alternative.

Finding 8: That there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified, showing mitigation measures or alternatives which are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure or alternative.

Evidence: The Resource Management Agency, the Planning Commission, and the Board of Supervisors evaluated the project in light of the criteria set forth in Public Resources Code §21166 and CEQA Guidelines (14 California Code of Regulations) §15162, evaluated the proposed General Plan amendment and have determined that there is no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified showing mitigation measures or alternatives that are considerably different from those analyzed in the FEIR would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure or alternative.

Finding 9: That the Board of Supervisors has considered the certified FEIR for GPA 09-42, the County 2035 General Plan Update, together with all comments received during the public review process.

Evidence: The GPA 09-42 certified FEIR was made available to the Board of Supervisors in preparation for the Board meeting of November 8, 2016, and relevant reference was made to the FEIR within the presentation of GPA 16-55 to the Board of Supervisors at the said meeting for the purpose of informing a decision on GPA 16-55.

Finding 10: The certified GPA 09-42 FEIR reflects the independent judgment of the Board of Supervisors and County Board of Supervisors.

Evidence: The Resource Management Agency prepared the GPA 16-55 staff report, including discussion of the GPA 09-42 certified FEIR and its relevance to Board of Supervisors action on GPA 16-55. Both the FEIR and staff report were reviewed by the Board of Supervisors, and the Board of Supervisors earlier reviewed the FEIR in detail before its certification, an action taken by the Board of Supervisors on July 21, 2015. Based upon their review of the project information, the Board of Supervisors decision reflects its independent evaluation and judgment of the project.

Finding 11: None of the conditions described in 14 CCR 15162 or 15153 which would require a subsequent or supplemental EIR, or other CEQA evaluation, have occurred as set forth above in the findings above. No minor changes to the FEIR are needed to make the previously adopted EIR adequately apply to the project in the changed situation.

Evidence: All documents in the record, as well as the documents on file for GPA 16-55 and the FEIR adopted by the Board of Supervisors are on file with the Clerk of the Board and/or the Clerk of the Planning Commission.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito that it hereby finds as follows:

Finding 1: That the approval of the General Plan Amendment is deemed to be in the public's interest.

Evidence: The proposed General Plan Amendment updating the County's Health and Safety Element Policy HS-6.9 resolves a potential internal conflict between the Land Use and Health and Safety Elements, and ensures that all relevant factors will be considered on a case-by-case basis when determining an appropriate buffer zone.

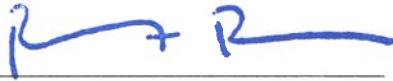
Finding 2: That the 2035 Health and Safety Element update substantially complies with requirements of State Government Code §65302(g) *et seq.*, regarding Safety Elements and protection of the community from unreasonable environmental risks.

Evidence: The 2035 Health and Safety Element update is a revision of the 2003 Seismic Safety/ Safety Element to identify the previous programs' effectiveness, implementation progress, and appropriateness and to modify, discontinue, declare complete, or replace the programs according to changed need. The Element provides guidance for how to protect county residents, workers, visitors, and properties from unreasonable risks associated with natural and manmade hazards. One of the main strategies used by the County to maintain safety is to require distance between known hazards and places where people live, work, and congregate.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby adopts General Plan Amendment 16-55, amending the San Benito County Health and Safety Element to amend Policy HS-6.9, and adopts the FEIR Addendum, both of which are attached hereto and incorporated herein by reference as Exhibits 1 and 2, respectively, to this Resolution.

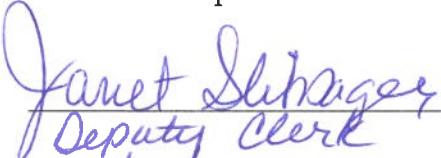
PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO THIS 8TH DAY OF NOVEMBER 2016 BY THE FOLLOWING VOTE:

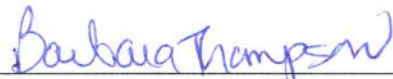
AYES Supervisor(s): **Rivas, De La Cruz, Barrios, Botelho, Muenzer**
NOES Supervisor(s): *none*
ABSENT Supervisor(s): *none*
ABSTAIN Supervisor(s): *none*

By: 
Robert Rivas, Chair of the Board of Supervisors

ATTEST:
Louie Valdez
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM
Matthew Granger, County Counsel

By: 
Deputy Clerk
Date: 11/8/16

By: 
Barbara Thompson, Acting Assistant County Counsel
Date: 11/8/16

ATTACHMENT 1

Policy HS-6.9: Sensitive Uses near Industrial Facilities

A buffer shall be maintained between new sensitive land uses (such as residential subdivisions, schools, day care centers, hospitals and parks) and commercial facilities that conduct bulk-scale receiving unloading handling, blending and/ or loading of industrial and/ or agricultural chemicals regulated as potentially hazardous by state and/ or federal environmental protection agencies. The appropriate buffer shall be established on a case-by-case basis. Factors to be considered in establishing the buffer shall include: (1) the impact of development of sensitive land uses on the ability of regulated facilities to continue current operations, (2) federal and state environmental laws and regulations, (3) the degree of hazard associated with individual industrial facilities, (4) the recommendations of the County Fire Marshall and Environmental Health Department, and (5) emergency response, contingency, and other comparable plans submitted to and/or filed with federal, state, or local agencies. This buffer does not apply to feed and supply stores, hardware stores, gas stations or similar facilities that handle such chemicals in retail trade.

ATTACHMENT 2

Addendum to Final EIR No. 2011111016

General Plan Amendment 16-55

Amendment of Policy HS-6.9 Sensitive Uses near Industrial Facilities

County of San Benito

September 2016

PREVIOUS ENVIRONMENTAL DOCUMENTATION

A Final Environmental Impact Report (FEIR) for the San Benito County 2035 General Plan Update (2035 GPU) was prepared by the County of San Benito in accordance with the California Environmental Quality Act (CEQA). The San Benito County Board of Supervisors certified the FEIR and adopted in July 2015.

Specifically, a program-level environmental impact report (FEIR) was prepared for General Plan Amendment (GPA) 09-42 (the 2035 GPU), pursuant to CEQA Guidelines Section 15161, focusing on the changes in the environment that would result from its implementation as required under CEQA. The FEIR examined all environmental impacts of the project as compared to the existing environment in the vicinity of the project from both a local and regional perspective. On July 21, 2015, the Board of Supervisors, at a public hearing, considered the FEIR, along with the recommended mitigation measures, the mitigation monitoring and reporting program, the statement of overriding considerations, and all findings required by CEQA. The public hearing resulted in the Board of Supervisors' adoption of Resolution 2015-58, certifying the FEIR, adopting findings required by CEQA (including, among others, a Statement of Overriding Considerations), and adopting a mitigation monitoring and reporting program.

Among other things, the 2035 GPU contemplates a significant amount of residential development that is anticipated to occur during the planning horizon in order to address the County's housing needs for all economic segments and in particular, to satisfy the County's regional housing needs in accordance with State housing laws. The FEIR analyzed the environmental consequences of implementing the 2035 GPU, including the planned growth described therein as well as the various programs and policies (including, without limitation, Programs LU-8 and HS-6.9) set forth in the 2035 GPU that are designed to guide that planned growth.

Prior to approval of subsequent actions under the 2035 GPU that constitute a "project" under CEQA, the County is required to determine whether the environmental effects of such actions are within the scope of the project covered by the FEIR, and whether additional environmental analysis is required. If the agency finds that none of the triggers set forth in Section 15162 of the CEQA Guidelines has occurred, then no further environmental review shall be required and the County may document these conclusions in an addendum pursuant to CEQA Guidelines Section 15164(e).

BACKGROUND: TRIGGERS FOR FURTHER ENVIRONMENTAL REVIEW

In an effort to provide a degree of finality, CEQA includes a strong presumption against requiring any further environmental review once an EIR has been prepared and certified for a project. Specifically, once an EIR has been completed, the lead agency may not require preparation of a subsequent or supplemental EIR unless one of the three triggering conditions described below exists.

Section 15162 of the State CEQA Guidelines states:

(a) When an EIR has been certified or negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15164 states, in relevant part: "The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred." Further, although not required under the law, a lead agency may prepare an addendum to an EIR to evaluate changes to a project, changes in circumstances, or new information, and to document the agency's determination that a subsequent or supplemental EIR is not required. See § Section 15164(e).

ADDENDUM PURSUANT TO SECTION 15164(E)

Program HS-6.9 of the 2035 GPU requires a 2.5 mile buffer zone around certain facilities that handle hazardous materials, without regard to topography, climatic, or other conditions that could ameliorate the need for a specific buffer size.

This proposed action merely amends HS-6.9, which was previously analyzed as part of the FEIR process, to replace the static buffer size with a buffer established on the basis of five factors related to the specific site and surrounding lands. The Program does not, in and of itself, authorize development of any specific project. Rather, each individual development application that would be subject to the Ordinance will be required to comply with CEQA, including the appropriate level of environmental review as mandated under state law.

For these reasons, the County of San Benito has determined that none of the three triggers under Section 15162 has occurred in connection with the County's consideration of the Policy HS-6.9. Further, the County has determined it is appropriate to document this conclusion in this Addendum pursuant to Section 15164(e).

FINDINGS

Pursuant to Section 15162 and 15164(e) of the CEQA Guidelines, the County of San Benito has determined, on the basis of substantial evidence in the light of the whole record, that:

(a) Amended Program HS-6.9 does not propose substantial changes to the General Plan which would require major revisions to the FEIR due to new or substantially more severe significant environmental effects than previously analyzed in the FEIR;

(b) There have been no substantial changes in circumstances under which land development will be undertaken that will require major revisions to the FEIR due to new or substantially more severe significant environmental effects than previously analyzed in the FEIR; and

(c) No new information of substantial importance as described in subsection (a)(3) of Section 15164 has been revealed that would require major revisions to the FEIR or its conclusions.

Evidence:

Program HS-6.9 states that assessing the compatibility of land uses the County shall consider factors such as the impact of development of sensitive land uses on the ability of regulated facilities to continue current operations, federal and state environmental laws and regulations, the degree of hazard associated with individual industrial facilities, the recommendations of the County Fire Marshall and Environmental Health Department, and emergency response, contingency, and other comparable plans submitted to and/or filed with federal, state, or local agencies.. This policy was previously analyzed by the County through the CEQA process in the FEIR. No substantial changes to the 2035 GPU are required, nor are any changes to the FEIR necessary due to previously unevaluated significant environmental effects that may occur as a result of the change. There have been no substantial changes that were not previously analyzed, and no new information of substantial importance has been discovered. The purpose of the amendment is to require site-specific review of land uses for compatibility with surrounding land uses, specifically as regards bulk use of hazardous materials. All individual development proposals that will be subject to the Ordinance will be analyzed as necessary under CEQA with the appropriate CEQA documentation prepared in connection therewith on a case-by-case basis.

In accordance with CEQA Guidelines Section 15164(e), this Addendum to the previously certified FEIR is appropriate to document the County's conclusions that no further environmental review has been triggered in connection with its consideration of Program HS-6.9.