

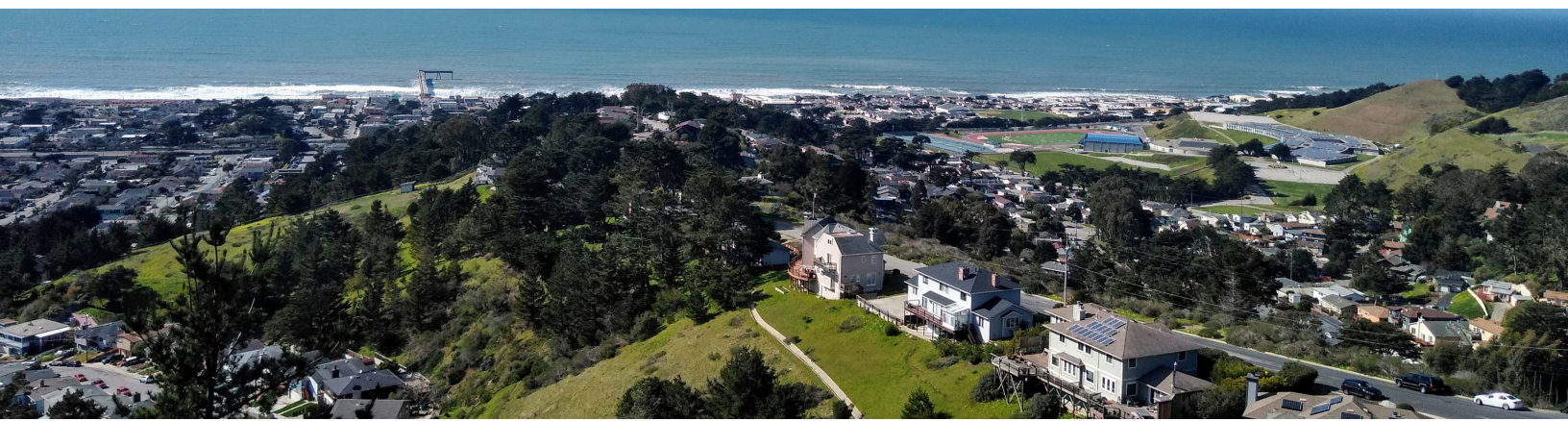


# P A C I F I C A D I R E C T

The City provides this Fact Sheet relating to the **Development Review Process** as a courtesy to the public and to assist the public in understanding certain basic information about the general review process for development projects. This Fact Sheet is not intended to provide legal advice nor is it intended to be relied upon as the process for any specific project.

## Development Review Process Fact Sheet

This document provides information on the City of Pacifica's development review process and answers common questions about that process. Frequently Asked Questions (FAQs) are included in this document.



### OVERVIEW

The development review process involves two permit types: ministerial and discretionary. The review process for ministerial and discretionary permits differ considerably, including different provisions for public involvement and environmental review, in addition to other factors. Having both ministerial and discretionary permits allows the City to ensure the right balance of time, cost, and staff resources associated with review of different types of projects. Additionally, some types of projects are required by law to have ministerial review.

### MINISTERIAL PERMITS

Ministerial permits require the City to compare a project against adopted standards to determine whether the project complies with those standards. A building permit is a common type of ministerial permit. With a building permit application, the City's review involves comparing the proposed development against the adopted California Building Code, California Fire Code, zoning, and other adopted standards. An applicant is advised of any project components that do not comply with the adopted standards and may revise the project as necessary until the City may issue a building permit.

The review process for ministerial permits is directly between the City and the applicant. Generally, a ministerial permit does not include public noticing or environmental review. Environmental review under the California Environmental Quality Act (CEQA) is performed on the regulations governing a ministerial permit process at the time they are adopted, and no additional CEQA review is required for issuance of ministerial permits. Ministerial permits are not subject to appeal.

## DISCRETIONARY PERMITS



Discretionary permits require the City to evaluate evidence and determine whether a project would be consistent with a broad range of policies, in addition to evaluating the project for compliance with adopted standards. For example, a use permit is a common type of discretionary permit.



Approval of a use permit requires the City to make findings, including for example, that a development would not be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City. This finding grants the City broad discretion to consider any number of potential impacts to health, safety, and welfare.



The City's determination on a discretionary permit must be in writing and must be based on substantial evidence. This means the City must have reliable evidence to inform its decision making on a discretionary permit, and it cannot rely on speculation or unsubstantiated opinion.

The discretionary review process requires compliance with CEQA and most often requires a public hearing.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

**CEQA is the state law that requires every public agency to consider the potential environmental impacts of a "project," as defined in Section 15378 of the CEQA Guidelines, before taking action to issue a discretionary approval for such a project.**

If a proposed activity entails a project subject to CEQA that requires a discretionary approval, the first step in the CEQA process is to determine whether the project is exempt from CEQA under either a statutory or categorical exemption. Statutory exemptions are set forth in CEQA and other state laws and are absolute, meaning if a project meets the plain language/criteria of a statutory exemption the project is exempt and no further environmental review under CEQA is required. Categorical exemptions are set forth in state regulations known as the CEQA Guidelines and typically apply to classes of projects that have been determined by the state to generally not have a significant effect on the environment, including but not limited to, new construction and location of limited numbers of new, small facilities or structures and minor public or private alterations in the condition of land. Unlike statutory exemptions, categorical exemptions are not absolute as there are a number of exceptions that if applicable, can disqualify a project from CEQA's categorical exemptions.

A project that is not exempt from CEQA requires the City to move to the next step in the CEQA environmental review process which commonly involves the preparation of an Initial Study. An Initial Study includes an assessment of a project's potential environmental impacts, such as the effects on a wide range of environmental resources including aesthetics, air quality, biological resources, and others. The Initial Study helps the City understand what environmental effects a project may have, whether there is (or is not) substantial evidence that the project may cause a significant adverse effect on the environment and, ultimately the appropriate level of environmental review/CEQA document that is required as a result of that assessment. If the Initial Study finds that a project will not result in any significant adverse impacts, a Negative Declaration (ND) is the appropriate CEQA document. If the Initial Study finds that a project may result in one or more significant adverse impacts but that mitigation measures will reduce any such impacts to insignificant levels, a Mitigated Negative Declaration (MND) is the appropriate CEQA document. Finally, if the Initial Study finds that a project will result in one or more significant adverse impacts despite the imposition of mitigation measures, an Environmental Impact Report (EIR) is required. The process of preparing NDs, MNDs and EIRs includes public notice, a public review and comment period.

## PUBLIC HEARINGS

Following completion of any applicable environmental review under CEQA, discretionary permits are generally scheduled for a public hearing. A small number of discretionary permits do not require a public hearing process.



- Public hearings on discretionary permits are most commonly held by the Planning Commission. Sometimes projects require further approvals, or are appealed, which will result in a public hearing by the City Council.
- Public hearings are preceded by a public notice to announce the hearing. Generally, state law requires that public notices be provided not less than 10 days in advance of most public hearings with notice provided in a newspaper of general circulation within San Mateo County and by mail to property owners within 300 feet of a project site. The City of Pacifica has a policy of mailing public hearing notices to occupants as well as property owners within an expanded radius of 500 feet.
- Public hearings typically involve a presentation from City staff and the permit applicant, a public comment period, and deliberation followed by a decision by the public hearing body. The decision comes in the form of a motion that a majority of the body must support. Occasionally, the public hearing body will require more information to make a decision, and the public hearing will be continued to a future date.

## DUE PROCESS

Due process is a fundamental right provided under the U.S. Constitution and other laws. This generally means providing fair and equal treatment under the law to all project applicants, regardless of the project they have proposed.

An important component of due process is an applicant's opportunity to have a hearing before the decision making body to receive a determination on its application. A hearing provides an applicant the opportunity to be heard and provide evidence that could support an approval of its application, while also providing the public an opportunity to submit its own evidence regarding a project. Due process also requires that the City avoid bias on the part of its officers and employees when reviewing a permit application.

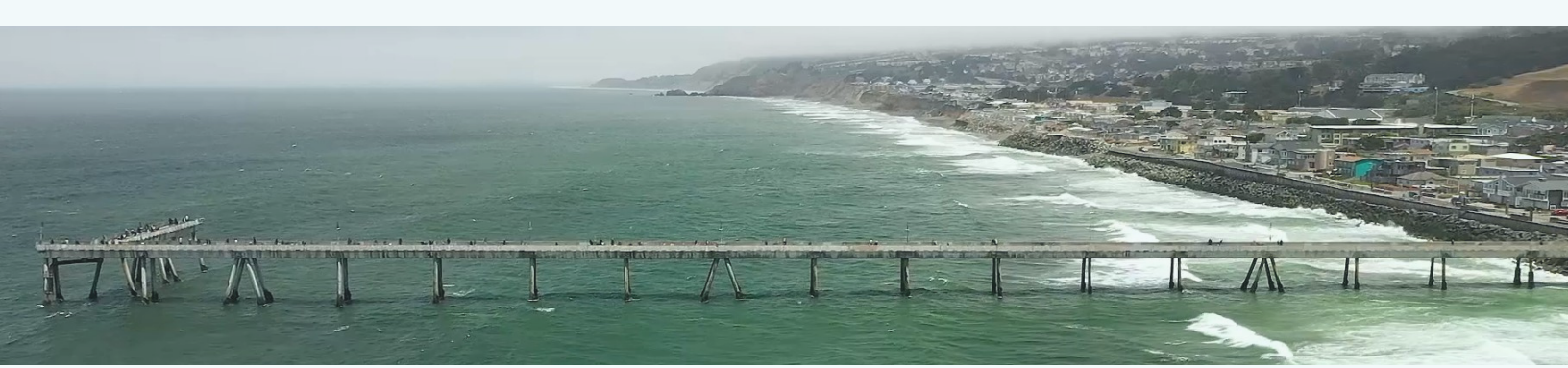
The City is able to make a decision on a permit application only after providing due process to an applicant.

## Common Questions

### **How is the public involved in the development review process?**

*The public notice, comment, and hearing procedures required for discretionary permits are established in state law and in the Pacifica Municipal Code (PMC). These typically involve public notice by mail and newspaper publication, and one or more public hearings. There is also public review and comment period when environmental review of a project is required (see CEQA, above).*

*While the City encourages applicants to engage early with the public before submitting an application, the City does not require a pre-application community meeting. Such early engagement with the public can be helpful to identify potential concerns; however, projects often evolve and change after being submitted to the City. The procedures established in state law and in the PMC provide for public notice and comment once an application is complete, meaning all the information required to understand the final development proposal has been received. City staff can most effectively answer public questions about a development proposal once an application is complete.*



### **How is the public involved in the development review process? (Continued)**

*As noted above, ministerial permits generally do not include public noticing or environmental review requirements. Therefore, public notification and a public hearing would not occur prior to an applicant submitting an application for a ministerial permit or prior to the City approving such permit.*

### **Why can't the City reject an application that doesn't make sense for Pacifica?**

*All development project applicants are entitled to due process under the law. This means the City is required to accept all development permit applications and evaluate them through the City's standard review process. It can often take months or years before an application is determined to be complete, which is the point at which the City has all the information required to fully understand the application, and the application review process can begin.*

### **If all my neighbors come to a public hearing to oppose a project, why isn't that enough for the City to deny it?**

*An applicant is entitled to due process under the law and the City has an obligation to hear and consider all evidence submitted at a hearing. The City's final decision on a project must be supported by substantial evidence and cannot be based solely on public sentiment and opinion. The City needs to establish a record of substantial evidence to support its decisions to approve or deny projects in case its decision is challenged in court.*

### **Why are some projects approved but never built?**

*A variety of factors affect whether a project that is approved by the City is ultimately constructed. A developer's personal or financial situation could change in an unexpected way, causing them to abandon a project. Sometimes, the market for the type of project proposed may experience a downturn. In other cases, increased construction costs may render a project unaffordable to construct.*

### **What factors affect the time it takes the City to review projects?**

*The project review process involves many steps. Delays are often incurred when an applicant does not respond timely to the City's requests for information. Additionally, the City has limited staff resources and some projects have statutorily mandated deadlines that require the City to prioritize those projects over other projects which don't have mandated deadlines, which can impact the City's time for review of a project. Environmental review required by CEQA can also add considerable time to the project review process. The City works as efficiently as it can to complete the project review process in accordance with applicable law.*

### **Can the City determine the applicable review process for all development projects?**

*Although the City has significant control over the review process for many types of development, the City does not control the review process for all development. In some cases the City's control is subject to limitations in state and federal law. This is particularly true when a local land use matter can affect issues of broader regional, statewide, or national concern. For instance, state laws passed recently, including but not limited to Senate Bill (SB) 35 and SB 330, have modified how local agencies may review certain housing projects. Federal laws also place limits on local agency review of development projects in some cases, such as review of wireless telecommunications facilities. The review of development projects occurs within a complex legal framework, and the City must carefully determine the laws and processes applicable to each development project application that it receives.*