



# LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

**HEARING DATE:** May 18, 2023

**AGENDA ITEM # 5**

## Project Description

**Applicant:** San Bernardino County Land Use Services Department

**Community:** Countywide

**Location:** Countywide

**Project No:** PMISC-2020-00005

**Staff:** Aron Liang, Planning Manager

**Proposal:** Recommendation to the Board of Supervisors a Development Code Amendment to Title 8 of San Bernardino County Code, to add Chapter 85.22 to establish application and review procedures for projects located in, or near, an Environmental Justice Focus Areas.

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Newspaper Publication Date: May 8, 2023

Report Prepared By: Aron Liang

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## **PROJECT DESCRIPTION**

This proposal is a recommendation to the Board of Supervisors for a Development Code Amendment to Title 8 of the San Bernardino County Code (Development Code), to add Chapter 85.22 to establish application and review procedures for projects located within, or near, Environmental Justice Focus Areas.

## **BACKGROUND**

In 2016, the state legislature adopted the “Planning for Healthy Communities Act,” also known as Senate Bill 1000 (SB 1000). The bill required cities and counties with disadvantaged communities to incorporate environmental justice (EJ) policies into their general plans. These EJ policies addressed topics and policies such as improving public facilities, reducing pollution burden, expanding access to food and recreational opportunities, and promoting safe and sanitary housing.

On October 27, 2020, the Board of Supervisors adopted the Countywide Plan (CWP), which included the Policy Plan, the Business Plan, and Community Action Guides. The Policy Plan contained a comprehensive update of the County’s general plan, which included the adoption of “Hazards Element Policy HZ-3 - Environmental Justice”, which

added EJ policies to be compliant with SB 1000. The adoption of the CWP requires that the County Development Code be updated as appropriate and necessary to implement the Policy and Business Plans.

Additionally, the Land Use Services Department (Department) continuously works to update the Development Code to simplify and streamline the permitting processes, add, amend, eliminate, and repeal unnecessary barriers, and contradictions, to assure compliance with state and federal regulations.

## **ANALYSIS**

The proposed Development Code Amendment (Amendment) is consistent with the CWP and will provide an update to Title 8 of San Bernardino Development Code, necessitated by recent adoption of the CWP. The Amendment is designed to provide equitable levels of protection from environmental and health hazards; expand opportunities for physical activity and meaningful civic engagement; and to protect neighborhood character of adjacent communities and sensitive receptors, which can be summarized, as follows:

### **Content of the Proposed Ordinance: Environmental Justice Focus Areas (EJFA)**

Title 8 of San Bernardino County Code will be amended to add Chapter 85.22 (Exhibit A), to implement the goals and policies of the Hazard Element by regulating and establishing process and review procedures, development standards and use standards for development projects located within, or near, an Environmental Justice Focus Areas, and is organized into five sections as follows:

#### **Section 85.22.010 – Purpose**

This section provides information on the overall purpose of the section for EJFA, and general criteria provisions used throughout the chapter, to include:

- Implement EJ goals and policies for development projects proposed within, or near, an EJFA.
- Establish criteria for EJFA location distance requirements.
- Establish criteria for determining predominant language spoken in EJFA.

#### **Section 85.22.020 - Establishment**

This section provides identification and boundaries of an EJFA, as shown in the Policy Map HZ-10 (Environmental Justice & Legacy Communities), link:

<https://www.arcgis.com/apps/webappviewer/index.html?id=7e14816d164b46fc83d4fee6d523a458>

#### **Section 85.22.030 – Applicability**

This section describes the methodology for which the Department will apply in determining a development project application is complete for processing and for denial requirements.

#### **Section 85.22.040 - Process and Review Procedures**

This section describes the parameters for reviewing procedures and specific project applicability, to include:

- Table 85-6 - EJFA notification and outreach requirements, which outlines notification of distance requirements for land use Category A, Category B, and Category C, as follows:

<i>Table 85-6</i>				
<i>EJFA Notification and Outreach Requirements</i>				
<b>Category</b>	<b>Project Applicability</b>	<b>Notification Area</b>	<b>Outreach Plan</b>	<b>Outreach Meeting</b>
(A) Project is in or within 1,000 ft of EJFA	Development project (excluding Category C amendments) for a proposed use that may have certain negative environmental or operational impacts (noise, dust, odors, operating hours, truck traffic, etc.) on the surrounding EJFA, not requiring an EIR.	1,300 feet from subject site boundaries (1/4 mile).	No	No
(B) Project is in or within 1,000 ft of EJFA	Development Project (excluding Category C amendments) for a proposed use that may have the potential for creating undesirable environmental or operational impacts (such as the use of hazardous, toxic, explosive, or flammable materials in large quantities, exposure to high levels of diesel exhaust or fumes, etc.) on the surrounding EJFA. A development project (excluding Category C amendments) that requires an environmental impact report (EIR) or health risk assessment (HRA) shall be classified in this Category.	2,640 feet from subject site boundaries (1/2 mile).	Yes	1
(C) Land Use Category or Zone Designation Amendment in or within 1,000 ft of EJFA <sup>(1)</sup>	Land Use Category or Zone Designation amendment.	2,640 feet from subject site boundaries (1/2 mile).	Yes	2
<b>Notes:</b>				
(1) A compressive amendment initiated by the Director, Commission or Board shall be exempt from the notification and outreach requirements.				

- Land use category determination.
- Submittal requirements for Category A, Category B, and Category C.
- Outreach plan contents.
- Notification requirements for Categories B and C Projects.

### Section 85.22.050 – General Development and Use Standards

This section specifies concise development standards pertaining to traffic routes and specific land uses, to prohibit:

- Traffic routes through a residential neighborhood.
- Industrial and commercial development use of local or residential streets for employee, customer, or truck access or parking.
- No hazardous waste facilities shall be located within, or near, an EJFA.

### **ENVIRONMENTAL DETERMINATION**

The Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it can be determined with certainty that the Development Code Amendment will not have a significant effect on the environment.

### **FINDINGS**

The following findings must be made by the Planning Commission in its recommendation to the Board of Supervisors to approve the proposed Amendment:

1. The Amendment is consistent with the CWP and any applicable specific plan because it supports land use goals and policies designed to require compatibility with existing uses, planned uses and the natural environment. Specifically, the Amendment includes regulations that will require development and operational standards so that development projects in or near an EJFA may be compatible with surrounding uses. The Amendment is also consistent with policies designed to reinforce community identity and will allow the County to properly regulate the review procedures for development projects located within, or near, an EJFA as delineated in proposed Chapter 85.22 of the Development Code. The Amendment will implement the following CWP policies:

**Policy LU-2.1 Compatibility with existing uses** - We require that new development is located, scaled, buffered, and designed to minimize negative impacts on existing conforming uses and adjacent neighborhoods. We also require that new residential developments are located, scaled, buffered, and designed so as to not hinder the viability and continuity of existing conforming nonresidential development.

**Policy HZ-2.1 Hazardous waste facilities** - We regulate and buffer hazardous waste facilities to protect public health and avoid impacts on the natural environment.

### **Policy HZ-3.1 Health Risk Assessment**

We require projects processed by the County to provide a health risk assessment when a project could potentially increase the incremental cancer risk by 10 in 1 million or more in unincorporated environmental justice focus areas, and we require such assessments to evaluate impacts of truck traffic from the project to freeways. We establish appropriate mitigation prior to the approval of new construction, rehabilitation, or expansion permits.

**Policy HZ- 3.16 Notification** - We notify the public through the County website, mail, and other means when applications are accepted for conditional use permits, changes in zoning, and Policy Plan amendments in or adjacent to environmental justice focus areas. We prepare public notices in the predominant language(s) spoken in the communities containing environmental justice focus areas.

### **Policy HZ-3.17 Community stakeholders**

We identify and coordinate with key community stakeholders through advisory committees or other methods to increase public awareness and obtain timely community input concerning potential funding opportunities, conditional use permits, changes in zoning, and amendments to the Policy Plan in or adjacent to environmental justice focus areas.

### **Policy HZ-3.18 Application requirements**

In order for a Planning Project Application (excluding Minor Use Permits) to be deemed complete, we require applicants to indicate whether the project is within, adjacent to, or nearby an unincorporated environmental justice focus area and, if so, to;

- document to the County's satisfaction how an applicant will address environmental justice concerns potentially created by the project; and
- present a plan to conduct at least two public meetings for nearby residents, businesses, and property owners to obtain public input for applications involving a change in zoning or the Policy Plan. The County will require additional public outreach if the proposed project changes substantively in use, scale, or intensity from the proposed project presented at previous public outreach meeting(s).

**Policy HZ-3.20 Updating EJFAs.** - We update the assessment of boundaries, issues, policies, objectives, and implementation strategies regarding environmental justice focus areas subsequent to updates in CalEnviroScreen, equivalent state tools, or as the County deems necessary.

**Policy TM-5.6 Unincorporated truck routes** - We establish local truck routes in unincorporated areas to efficiently funnel truck traffic to freeways while minimizing impacts on residents. We establish routes where trucks are prohibited in unincorporated environmental justice focus areas and to avoid overlaps or conflicts with safe routes to schools.

2. The Amendment will not be detrimental to the public interest, health, safety, convenience or welfare of the County. The Amendment is designed to enhance the public interest, health, safety, convenience and welfare of the County to effectively regulate development projects located within, or near, an EJFA.
3. The Amendment is internally consistent with other applicable provisions of the Development Code. The Amendment establishes and implements EJFA goals and policies to regulate development projects located within, or near, an EJFA, while protecting the general health, safety, and welfare of the public and surrounding sensitive receptors, which include but not limited to residential neighborhoods, schools, parks, playgrounds, and day care centers.
4. The Amendment is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it can be determined with certainty that implementation of the Amendment would not have a significant effect on the environment.

### **RECOMMENDATION**

That the Planning Commission recommend that the Board of Supervisors take the following actions:

1. **FIND** that the Project is exempt from CEQA pursuant to CEQA Guidelines Sections 15060(c)(2) and 15061(b)(3);
2. **ADOPT** the findings as contained in the staff report;
3. **ADOPT** the Project to add Chapter 85.22 to establish application and review procedures for projects located in, or near, an Environmental Justice Focus Areas; and
4. **DIRECT** the Clerk of the Board to file a Notice of Exemption (Exhibit B).

### **ATTACHMENTS**

Exhibit A: Proposed Chapter 85.22 - EJFAs

Exhibit B: Notice of Exemption

# EXHIBIT A

## Proposed Chapter 85.22-EJFAs

## **CHAPTER 85.22 ENVIRONMENTAL JUSTICE FOCUS AREAS**

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### **Sections:**

85.22.010	Purpose
85.22.020	Establishment
85.22.030	Applicability
85.22.040	Process and Review Procedures
85.22.050	General Development and Use Standards

### **85.22.010 Purpose**

- (a) The purpose of this Chapter is to implement environmental justice goals and policies for applicable development projects proposed within or near an unincorporated environmental justice focus area (EJFA) established by the Policy Plan pursuant to Government Code section 65302(h).
  
- (b) For purpose of this Chapter, the following terms and phrases are defined as follows:
  - (1) A development project shall include a land use application for a policy plan amendment, specific plan or specific plan amendment, zoning amendment, conditional use permit, or planned development permit.
  - (2) An EJFA shall mean an area identified on Policy Map HZ-10 (Environmental Justice & Legacy Communities). A development project is considered located near an EJFA if the exterior boundary of any portion of the subject parcel is located within 1,000 feet of an EJFA boundary.
  - (3) Predominant language spoken means a language, other than English, that is spoken by at least 10 percent of residents who are considered linguistically isolated in the EJFA or census tract as published by the California Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Linguistic Isolation Map, as may be amended.



**85.22.020 Establishment**

Identification and boundaries of an EJFA are as shown on Policy Map HZ-10 (Environmental Justice & Legacy Communities) and are available for review at the Department and posted on the Department website at <https://countywideplan.com>.

**85.22.030 Applicability**

- (a) This Chapter shall apply to an application for a development project located within or near an EJFA.
- (b) An application for a development project located in or near an EJFA shall not be deemed complete for processing unless the requirements of this Chapter have been met. Failure to comply with the requirements of this Chapter are grounds for denial of an application.

**85.22.040 Process and Review Procedures**

- (a) The following application process and review procedure shall apply to a development project proposed within or near an EJFA pursuant to Table 85-6 (EJFA Notification and Outreach Requirements), below.

<i>Table 85-6</i>				
<i>EJFA Notification and Outreach Requirements</i>				
<b>Category</b>	<b>Project Applicability</b>	<b>Notification Area</b>	<b>Outreach Plan</b>	<b>Outreach Meeting</b>
(A) Project is in or within 1,000 ft of EJFA	Development project (excluding Category C amendments) for a proposed use that may have certain negative environmental or operational impacts (noise, dust, odors, operating hours, truck traffic, etc.) on the surrounding EJFA, not requiring an EIR.	1,300 feet from subject site boundaries (1/4 mile).	No	No
(B) Project is in or within 1,000 ft of EJFA	Development Project (excluding Category C amendments) for a proposed use that may have the potential for creating undesirable environmental or operational	2,640 feet from subject site boundaries (1/2 mile).	Yes	1

	impacts (such as the use of hazardous, toxic, explosive, or flammable materials in large quantities, exposure to high levels of diesel exhaust or fumes, etc.) on the surrounding EJFA. A development project (excluding Category C amendments) that requires an environmental impact report (EIR) or health risk assessment (HRA) shall be classified in this Category.			
(C) Land Use Category or Zone Designation Amendment in or within 1,000 ft of EJFA <sup>(1)</sup>	Land Use Category or Zone Designation amendment.	2,640 feet from subject site boundaries (1/2 mile).	Yes	2

<b>Notes:</b>
(1) A compressive amendment initiated by the Director, Commission or Board shall be exempt from the notification and outreach requirements.

(a) **Category Determination.** Prior to acceptance of an application as complete for a development project located within or near an EJFA, the Director shall determine the category classification of the proposal in accordance with Table 85-6. The Director's determination may be appealable to the Commission in accordance with Chapter 86.08 (Appeals). The determination of an appeal by the Commission shall be final.

(b) **Submittal Requirements.** The following information is required to be made part of the application package for a development project:

(1) **Category A.** Category A application shall be processed in compliance with Chapter 85.01 (Permit Application Filing and Processing) and Chapter 85.03 (Application Procedures) with the following additional requirements:

(A) All public notices and postings for the development project application required by this Development Code shall be provided in English and in the predominant language spoken by residents in the EJFA.

(B) All public notices required by this Development Code shall be mailed to property owners, residents, business owners, and local community

groups within a distance required by Table 85-6 (EJFA Notification and Outreach Requirements) from the external boundary of the development project site.

(2) **Category B and Category C.** Category B and Category C applications shall be processed in compliance with Subsection 85.22.040(c)(1) above, and shall comply with the following additional requirements:

(A) An outreach plan prepared in compliance with Subsection 85.22.040(d) (Outreach Plan Contents) below.

(B) A Health Risk Assessment (HRA) shall be required for any development project that could potentially increase the incremental cancer risk by 10 in 1 million or more in an EJFA. A Health Risk Assessment required by this Chapter shall evaluate impacts of truck traffic from the development project site to the nearest freeway.

(c) **Outreach Plan Contents.** An outreach plan for a Category B or Category C application shall consist of the following information:

(1) A map of the development project site depicting the boundaries of the affected EJFA and identifying the location of the development project within the EJFA, or, if not within the EJFA, how far the development project is located from the EJFA boundary.

(2) A list of community stakeholders that will be contacted to participate in identifying the outreach components of the plan with the goal of reaching as many property owners, residents, business owners, and local community groups to participate and comment on the development project at an outreach meeting and public hearing.

(3) A schedule of planned outreach meeting with the date, time, place (within the EJFA), agenda, names of the applicant's representatives, consultants who will attend an outreach meeting and their functions.

- (4) How the applicant will provide notice to property owners, residents, business owners, and local community groups of the outreach meeting in compliance with Subsection 85.22.040(e) (Notification Requirements for Category B and Category C Development Projects), below.
- (5) How the applicant will provide interpreter services during an outreach meeting and public hearing for persons who speak limited or no English. The interpreter services shall be provided for those languages which are predominant within the affected EJFA.
- (6) How the concerns brought up by the property owners, residents, business owners, and local community groups will be documented for inclusion as part of the record of the development project. The applicant is required to show how the input from the EJFA participants at an outreach meeting will be used to improve the development project's potential impacts on the EJFA and show how the proposed project may be modified to address the concerns of the EJFA participants, as applicable. The outreach plan shall also include how the applicant will communicate the results of the outreach meeting and any modifications to the proposed project as a result of the outreach meeting to the EJFA participants, prior to any public hearing on the application.

**(d) Notification Requirements for Category B and Category C Development Projects.**

Notification of property owners, residents, business owners and community groups of an outreach meeting and public hearing shall comply with the requirements of Table 85-6 (EJFA Notification and Outreach Requirements) and include the following:

**(1) Outreach Meeting Requirements.**

- (A) The applicant shall be responsible for providing notices of the outreach meeting to the residents, property owners, business owners and local community groups pursuant to the approved outreach plan. The applicant shall provide the Department with proof of mailing and/or

posting of properties notified pursuant to the outreach plan and as required by Table 85-6 (EJFA Notification and Outreach Requirements).

- (B) The applicant shall provide, and the Department shall review and edit as necessary, a draft “Notice of Community Outreach Meeting” for each outreach meeting proposed in the outreach plan. The applicant shall provide the notice in English and in the predominant language spoken in communities within the affected EJFA.
- (C) The applicant shall provide, and the Department shall review and edit as necessary, a draft “Notice of Community Outreach Meeting” for each outreach meeting proposed in the outreach plan. The applicant shall provide the notice in English and in the predominant language spoken in communities within the affected EJFA.
- (D) The “Notice of Community Outreach Meeting” shall provide a general description of the development project, identify the development project location and provide the date, time, location and purpose of the outreach meeting. Notification of the outreach meeting shall be issued pursuant to the outreach plan and shall be mailed by the applicant to property owners, residents, business owners and local community groups at least 10 calendar days prior to the scheduled outreach meeting. The applicant shall be responsible for the cost of mailing.
- (E) The applicant shall be responsible for providing additional methods of providing public notice of outreach meetings to property owners, residents, business owners and local community groups within the required notification area of the EJFA through means identified in the outreach plan. Examples of methods may include posting of

informational posters, distribution of flyers, advertisements in local newspapers, social media, etc.

(F) When an application for a Category B or Category C development project is accepted by the Department as complete, the Department will notify the public of such application by posting the project description and related information on the Department's website.

(2) **Translation Requirements.** In the event a Category B or Category C development project requires the preparation of an environmental impact report (EIR) pursuant to the California Environmental Quality Act, the applicant shall be responsible for obtaining translating services to translate the executive summary portion of the draft environmental impact report into the predominant non-English language spoken in the EJFA.

(3) **Public Hearing Requirements.** In addition to the requirements of Section 86.07.020 (Notice of Hearing), the following public hearing requirements shall apply to a Category B or Category C development project proposed within or near an EJFA:

(A) At least 10 calendar days before the scheduled public hearing, the Department shall:

(i) Mail a notice of the meeting to all property owners, residents, business owners and local community groups within the notification area required by Table 85-6 (EJFA Notification and Outreach Requirements).

(ii) Post a notice of the public hearing on the Department's website.

(B) The notice and posting shall be in English and in the predominant language spoken in communities within the affected EJFA.

(C) Interpreter services shall be provided at the public hearing in the non-English, predominant language spoken in the affected EJFA. Interpreter

services shall be arranged by and paid for by the applicant. Failure to provide interpreter services at the public hearing may result in the public hearing being continued to a date at which such services are available.

**85.22.050 General Development and Use Standards**

**(a) Development Standards Applicable to an EJFA.** The following development standards shall apply to an EJFA:

(1) No new truck routes shall be established that result in truck access through a residential neighborhood within an EJFA.

(2) In no case shall an industrial or commercial development project be allowed to use local or residential streets for employee, client, or truck access or parking.

**(b) Use Standards applicable to an EJFA.** The following uses shall not be allowed in an EJFA:

(1) Hazardous Waste Facilities.

# EXHIBIT B

## Notice of Exemption



# Notice of Exemption

To:  Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

From: San Bernardino County  
Land Use Services Department  
Planning Division  
385 North Arrowhead Avenue, First Floor  
San Bernardino, CA 92415-0187

Clerk of the Board of Supervisors  
County of San Bernardino  
385 North Arrowhead Avenue, Second Floor  
San Bernardino, CA 92415-0130

## Project Description

<b>PROJECT TITLE:</b>	Development Code Amendment Countywide
<b>APPLICANT:</b>	San Bernardino County Land Use Services
<b>PROPOSAL:</b>	Add Chapter 85.22 – Environmental Justice Focus Areas to Division 5 of Title 8 of the San Bernardino County Code
<b>PROJECT #:</b>	PMISC-2020-00005
<b>COMMUNITY:</b>	Countywide
<b>LOCATION:</b>	Countywide

## Applicant

San Bernardino County

\_\_\_\_\_  
Name

385 N. Arrowhead Avenue, 1<sup>st</sup> Floor.

\_\_\_\_\_  
Address

San Bernardino, CA 92415

\_\_\_\_\_  
909.387.0235

\_\_\_\_\_  
Phone

## Representative

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Aron Liang, Planning Manager  
Lead Agency Contact Person

\_\_\_\_\_  
909.387.0235

\_\_\_\_\_  
Area Code/Telephone Number

\_\_\_\_\_  
Phone

Exempt Status: *(check one)*

- Ministerial [Sec. 21080(b)(1); 15268];
- Declared Emergency [Sec. 21080(b)(3); 15269(a)];
- Emergency Project [Sec. 21080(b)(4); 15269(b)(c)];
- Categorical Exemption. State type and section number: \_\_\_\_\_
- Statutory Exemptions. State code number: \_\_\_\_\_

Other Exemption: 15061 (b) (3) (Common-Sense Exemption and 15308 (Actions by Regulatory Agency for the Protection of Environment)

Reasons why project is exempt:

\_\_\_\_\_  
Signature Title Date

Signed by Lead Agency       Signed by Applicant

Date received for filing at OPR: \_\_\_\_\_

Land Use Services Department - Revised December 2020