



*Creating an Administrative Record:
The Good, Bad, and Ugly*

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Administrative Record

- *Why the title?*
- Good AR - records not only well-organized, but also contain evidence supporting the local agency's decision
- Bad AR - records well-organized, but contain evidence not supporting the local agency's decision
- Ugly AR - records not organized and contain evidence not supporting the local agency's decision

Administrative Record

- What you know about the “administrative record?”
 - I usually hear groans, whining, and it’s a lot of work!
 - I agree, these are valid responses!
 - I feel your pain!

Administrative Record

Exercise:

- What is in an Administrative Record?
- What is not?

Administrative Record

- Purpose: Guides the trial court/judge in reviewing the Local Agency's decision

The AR is the entire body of evidence presented to the local agency decision-makers

- *when it makes a final determination on a project*
- *that is provided to the trial court to assist in its review of the local agency's decision*

Administrative Record

- *The AR Box*



Administrative Record

- *Not to be confused with
Ginger in the Box!*



Administrative Record

As will be discussed- the contents of the AR is prescribed by statute and California Court Rules.



Administrative Record - Statutes

- Legal Basis:
 - Code of Civil Procedure (CCP) §§ 1094.5 and 1094.6
 - Code of Civil Procedure (CCP) § 1085
 - HHA - Govt Code (GC) § 65589.5
 - CEQA Public Resources Code (PRC) § 21167.6
 - CEQA – Check Local Court Rules !

Administrative Record - Statutes

- CCP §§ 1094.5 and 1094.6
Administrative Mandamus
Adjudicatory Actions: CUPs, TMs, and Variances
- CCP §1085
Traditional Mandamus
Legislative Actions: GPs, SPs, Zonings, and DAs

Administrative Record - Statutes

CEQA Writs - PRC § 21167.6

- CCP §§ 1094.5, 1094.6 and 1085

Housing Accountability Act (HAA) Writs –

- Gov Code § 65589.5
- CCP §§ 1094.5 and 1094.6

Time Limits

- CEQA PRC § 21167.6(a)
 - Request the local agency prepare the AR must be served within 10 business days from court filing
- CEQA PRC §21167.6(b)
 - Requires preparation of AR within 60 days after request
- HHA Govt C 65589.5(m)
 - Requires preparation of AR 30 days after petition served

Time Limits

Extensions:

- CEQA PRC § 21167.6(c)
 - Permits extensions of the 60-day time limit (each extension can only be 60 days)
- CEQA PRC § 21167.6(d)
 - Authorizes sanctions for failure to produce the record

Contents - What goes in the BOX?

- General AR requirements
- CEQA requirements
- California Rules of Court



Contents - What goes in the BOX?

Generally

Chronological order

- Local Agency's Decision
- Agenda(s)
- Staff Report(s)
- Attachments (draft Ordinance(s) -Resolution(s))
- Other attachments
- Public comments
- Minutes of meeting(s)
- Transcription of the hearings(s)



Contents - What goes in the BOX?

CEQA

Contents:

- PRC § 21167.6(e) (1)-(11)
 - Lists the *minimum* requirements of an AR
- California Rules of Court, Rule 3.2205
 - Form and format of Administrative Record
 - Organization and Order of Documents



Contents -What goes in the BOX?

Cal. Rules of Court 3.2205

Organization and Order of Documents

- The Notice of Determination
- The Resolutions or Ordinances adopted by local agency
- Local Agency findings
- Final EIR, including Draft EIR, revisions and all other environmental impact documents, such as negative declaration, mitigate negative declaration or addenda

Contents -What goes in the BOX?

Cal. Rules of Court 3.2205

- The initial study
- Staff reports
- Transcripts and minutes of the hearings
- The remainder of the AR records

Contents -What goes in the BOX?

- Oversized documents
 - Must be presented in manner allowing them to be easily unfolded and viewed
- Use of tabs or electronic bookmarks
 - The administrative record must be separated by tabs or electronic bookmarks that identify each part of the record

Index

- A detailed index must be placed at the beginning of the administrative record (each volume)

Contents -What goes in the BOX?

- Rule 3.2208 Paper format - Requirements
 - The paper must be recycled
 - Paper must be opaque, unglazed, white or unbleached, 8 ½ x 11 inches, 20 lb. weight

Binding and Cover

- Record must be bound on the left margin or contained in 3-ring binders
- Bound volumes must contain no more than 300 pages
- Binders must contain no more than 400 pages

Contents - What Does Not Go in the BOX?

- Any oral or written evidence NOT provided to the decisionmakers (City Council) before its decision
- Close of the public hearing-
 - Box Is Closed!!
- Very limited exceptions!



Contents - What Does Not Go in the BOX?

- *Western States Petroleum Assoc. v. Superior Court*

The exception for admitting extra-record evidence is very narrowly construed

- If the evidence existed *before* the local agency made its decision,
and
- It was not possible in the exercise of reasonable diligence to present this evidence to the local agency *before* the decision was made so it could be considered and included in the AR

Preparation

- Meet with each Department and review all documents in their files
 - This may have to occur more than once
- Have each Department put their documents in Chronological Order
 - Begin with the Notice of Determination, Rule 3.2205

Preparation

- Most likely the Planning Department Documents will be the foundation of your record
- Place these documents in order as outlined in Rule 3.2205(a)(1)(A) – (H)
 - Remember to check documents for clearness, adequate margins, and no extraneous notes or Post-its
 - Number each document with Post-it

Preparation

- Begin you Index
 - Be consistent with your descriptions, i.e. Letter FROM Applicant TO City Council
 - Be specific with descriptions, i.e. Planning Commission Newspaper Proof of Publication; City Council Ordinance #123.
 - Again, be careful with the order of documents
 - See Rule 3.2205(a)(1)(A) – (H)

Preparation

- Add other Departments' documents
 - Insert Chronologically
 - Re-number pages and index as you go
 - Eliminate Duplicate copies
 - Count each page and document the numbers on the "draft" index pages
 - Have a Department Staffer available to answer any questions that may arise about their documents

Preparation

- Final Review
 - *Check, Check, Check*
 - Compare the document with the index, making sure description, date and numbers match
 - Verify documents are in chronological order
 - Double check! Document must be clean and clear of extraneous marks

Preparation

If Hard Copy AR

- Printing –
- Select a Printer that is reliable and will accommodate a LARGE job
 - Verify they have Bates stamping capabilities and know what it means. This can now be done in-house with computer programs
 - Be sure they can reproduce large maps, do color copies and 3-hole punch or bind

Preparation

- Review the Bates stamped copy at the printers BEFORE making the necessary copies
- Have on hand all the supplies you will need; numerical dividers, binders, etc.

Preparation

If Electronic Copy AR

- Use a program like Adobe and PDF all of the records
- The PDFs may be bates stamped with that program
- The Index per Volume separates the records per topic, per meeting date, resolutions and ordinances., and notices...

Preparation

7	4/30/2024	Development Impact Fees Minutes, April 30, 2024, City Council Meeting	AR216 AR217- AR220
MAY 28, 2024, CITY COUNCIL MEETING			
8	5/28/2024	Agenda, May 28, 2024, City Council Meeting	AR221- AR223
9	5/28/2024	Staff Report, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR224- AR229
10	5/28/2024	Draft Resolution, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR230- AR232
11	5/28/2024	Final Development Impact Fee Nexus Study, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR233- AR349
12	5/28/2024	Development Impact Fee Scenarios, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR350- AR352
13	5/28/2024	PowerPoint Presentation Titled "Development Impact Fee (DIF) Nexus Study Adoption," Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR353- AR363
14	5/28/2024	Written Public Comment, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR364
15	5/28/2024	Written Public Comment, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR365- AR370
16	5/28/2024	Transcript, Agenda Item No. 4, Adoption of Nexus Study for Development Impact Fees (DIF)	AR371- AR398

Preparation

- Lodging the Record
- Once the Clerk has certified the AR, then it is “lodged” with the Court.
 - There is a form for certifying the AR
 - Parties must receive notice of certification of the AR and lodging of the AR

Public Records Act Requests

- Pre-Litigation PRA Requests
 - CEQA cases
 - Land use cases
 - Not seen as often in other civil litigation
- EXEMPTIONS
 - Pending litigation – doesn't always apply
 - Drafts- don't hang onto them!
 - Attorney-client
 - Joint Defense

Litigation Holds

- Once a lawsuit is filed, your Attorney may ask you to put a “litigation hold” on any/all records pertaining the subject matter ---- Even if those records are eligible for destruction per your RRS
- A Pre-Litigation PRA may also be a heads-up certain records will need to be preserved
- CEQA cases

Fees

- Local agency may recover the actual costs for transcribing or otherwise preparing the record - CCP § 1094.6(c)
- Parties shall pay any costs or fees imposed for preparation of the record
 - PRC § 21167.69(b)(1)
 - Fight over whether an upfront payment is required
Or, only pay for it if they lose
 - Common tactic- pre-ligation PRA to avoid paying for staff time in preparing the record

Lodging the AR with the Court

- Be careful --- don't allow it to be lost!!!
- But if it is, always have a back-up
- Court Clerks – be sure they “lodge it with the Court” not just file it
- Follow-up and make sure that the AR made it to the Judge's Court Room



Case Studies

- *Gilroy Citizens for Responsible Planning* (Saved by a Post-it!)
- *Protect Our Water v Merced County* (Bad AR)
- *Citizens for Ceres* (WalMart CEQA lawsuit) and *California Oak* (Joint Defense and Attorney-Client)
- *Ardon v. City of LA* (Inadvertent release of attorney/client records)
- *Golden Door Properties LLC v Superiors Court* (CEQA - AR needs to be preserved until project is approved/denied and SOL has run)
- *Western States Petroleum Assoc. v. Superior Court* (Extra-record evidence inadmissible)

Questions?

