

Chapter 19.42: Environmental Review

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19.42.010 Purpose and Applicability

- A. **Purpose.** This Chapter establishes City procedures for conducting environmental review to meet requirements of the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and other relevant and applicable federal, state, and local environmental laws and regulations for projects subject to the provisions of this Zoning Ordinance. These provisions are intended to insure that responsible decision-makers and the public are informed about the potentially significant environmental effects of proposed activities and that environmental review is integrated with the discretionary review provisions that this Zoning Ordinance establishes.
- B. **Applicability.** These procedures shall apply to all projects sponsored or assisted by the City and to all private projects requiring any discretionary approvals from the City including private projects involving funding or any other form of participation by a federal agency, if the federal agency requires the City to conduct environmental review in compliance with NEPA. In the event of a conflict between these environmental review regulations and applicable federal or state regulations or guidelines, the applicable federal or state regulations shall prevail. These provisions are not intended to replace the environmental review guidelines that the City Council adopted in compliance with CEQA and the State CEQA Guidelines.

19.42.020 Review Procedures

- A. **Preliminary Review.** Within 30 days after receiving an application subject to the requirements of this Zoning Ordinance, the Zoning Administrator shall conduct review in accordance with the requirements of Section 19.32.040 to determine if the application is complete pursuant to State law and applicable City regulations. As part of this review, the Administrator will identify issues to help decide if the application proposes a project that is subject to environmental review and may require the Applicant to submit additional information needed to support this determination. An application subject to environmental review pursuant to CEQA and the City's environmental guidelines shall not be considered complete until all studies that may be required are submitted. If the Zoning Administrator determines that an application is not subject to environmental review under CEQA, the Administrator shall proceed to process the application in accordance with this Zoning Ordinance.

- B. Review for Exemption.** If the Zoning Administrator determines that the application is a project subject to CEQA, within 30 days after determining that the application is complete, he or she shall determine if the project is exempt from environmental review pursuant to State law, the State CEQA Guidelines and any environmental guidelines that the City has adopted in compliance with CEQA.
1. If the Zoning Administrator has determined that a project is exempt from environmental review under CEQA, such determination shall be announced in any required public notice. The notice shall include a citation of the State Guidelines section or statute under which it is found to be exempt.
 2. Following approval of a project that is exempt from CEQA review, the Zoning Administrator or the Applicant may file a Notice of Exemption with the Contra Costa County Clerk as provided for in CEQA and the applicable State and City guidelines. The Applicant for a private project shall be responsible for any fees required to file such notice.
 3. A determination of exemption by any decision-making authority other than the City Council may be appealed to the City Council in the same manner provided for other appeals in Chapter 19.39: Appeals.
- C. Environmental Review Application.** If the proposed project is not exempt from environmental review, the Applicant shall submit an application for environmental review accompanied by a fee set by the Master Fee Schedule. The Administrator may require the submission of additional information and supporting documentation with the application for environmental review. After receiving an environmental review application, the Zoning Administrator shall determine whether to require preparation of an Environmental Impact Report (EIR) or Negative or Mitigated Negative Declaration. In order to make this determination, the Zoning Administrator shall prepare an Environmental Initial Study.
- D. Environmental Initial Study.** The Initial Study shall consider all phases of project planning, implementation, and operation and may rely upon expert opinion supported by facts, including documentation submitted by the applicant, technical studies, peer reviews or other substantial evidence to document its findings regarding the project's potential impacts. An Initial Study is not required to include the same level of detail as an EIR.
1. If the Zoning Administrator determines, after preliminary review, that the project, due to its design, size, nature, or location, will clearly have a significant impact on the environment and requires preparation of an EIR, an Initial Study is not required but may be prepared to assist identification of environmental issues.
 2. An Initial Study shall include:
 - a. A brief description of the project including its specific location;
 - b. A brief description of the environmental setting;

- c. A checklist, matrix, or other listing of the project’s environmental effects with discussion and documentation to support the entries;
 - d. Discussion of ways to mitigate any potential significant effects;
 - e. Information on the project’s consistency with the General Plan, zoning, and other applicable regulations;
 - f. List of resources cited and consulted.
3. Following completion of the Initial Study, the Zoning Administrator shall notify the applicant in writing of changes to the project that Staff has deemed necessary to reduce or avoid the significant effects identified in the Initial Study. Within 30 days following the date of the letter, the Applicant shall provide written notification to the Administrator indicating that the proposed amendments are acceptable or shall propose alternative measures that will achieve the same result. If the Applicant does not agree to revise the project an Environmental Impact Report shall be prepared.
- E. **Determination of Environmental Significance.** Based on the Initial Study, the Zoning Administrator will make one of the following findings:
1. There is no substantial evidence that the project will have a significant impact on the environment, and a Negative Declaration will be prepared;
 2. The project has been modified to avoid potential environmental impacts or to mitigate such impacts to a level of insignificance and a Mitigated Negative Declaration will be prepared; or,
 3. The proposed project will have, or may have, significant impact(s) on the environment and an Environmental Impact Report will be required.
- F. **Public Notice of Environmental Determination.** If the Zoning Administrator has determined that that proposed project will not have a significant effect on the environment, he or she shall prepare a Negative Declaration for public review in conformance with the requirements of CEQA and applicable State and City environmental review guidelines. If the Applicant has agreed to incorporate mitigation measures in order to reduce environmental impacts to a point of insignificance, the Zoning Administrator shall prepare a Mitigated Negative Declaration for public review. The Administrator shall provide public notice of the proposed environmental determination at the same time and in the same manner required for the underlying permit in accordance with Chapter 19.32: Common Procedures.
- G. **Public Notice of Environmental Determination.** The Zoning Administrator shall provide public notice of the proposed environmental determination for a period of at least 20 days in the same manner as the project application subject to environmental review.

- H. **Preparation of a Draft EIR.** If it is determined that an Environmental Impact Report (EIR) is required, the Zoning Administrator shall prepare, distribute, and post a Notice of Intent to Prepare an EIR in the same manner required for the underlying permit unless otherwise specified in applicable State or Federal requirements. The purpose of this notice is to inform interested parties that an EIR is being prepared, and to seek guidance about significant environmental issues and mitigation measures that should be explored. The Applicant or any aggrieved party who believes that a Negative Declaration, rather than an EIR, should be prepared for the proposed project may appeal to the City Council within 10 days after the notice has been posted. The City Council's decision shall be final. The City will prepare the draft EIR with its own staff or by contract with a consultant chosen by the City in conformance with the requirements of CEQA and applicable State and City environmental review guidelines. The Applicant shall pay the cost of preparing an EIR and reasonable costs for administering the work of outside consultants in accord with the adopted fee schedule.
- I. **Public Review of Draft EIR.** Following completion of a Draft EIR, the Zoning Administrator shall prepare and post a Notice of Completion initiating a minimum 30-day public review period or 45 days if the project is subject to review by a State Agency. The Administrator shall mail a notice of the availability of a Draft EIR to those requesting such notice in writing, to local and regional agencies, and interested federal agencies. The City shall make copies of the Draft EIR available for public review at the Planning Department during regular office hours and at the El Cerrito Public Library. The City may impose a charge for copies of the Draft EIR in accordance with the adopted fee schedule.
- J. **Final EIR.** After the public review period has expired, the City or its consultant will prepare a Final EIR for certification by the decision-making bodies responsible for action on the project. The Final EIR will consist of the Draft EIR, all of the comments received, a list of persons, organizations and public agencies commenting on the Draft EIR, and a response from the City on significant environmental issues raised in the draft EIR and comments.
- K. **Responsibility for Action on Environmental Document.** Any City official or body responsible for taking action on a project for which a Negative or Mitigated Negative Declaration, or EIR has been prepared shall use the environmental assessment to make its decision on the development proposal. If the project is approved, the decision-making body shall impose conditions to mitigate any adverse environmental impacts. The highest decision-making entity responsible for action on an application for a development permit shall approve the Negative Declaration or Mitigated Negative Declaration or certify the Final EIR prior to the time the project is considered for approval. The decision-making entity may decline to approve or certify the environmental document and request further review or analysis if, in its judgment, approval of the Negative Declaration (ND) or Mitigated Negative Declaration (MND) or certification of the Final EIR would not comply with the requirements of applicable State and local environmental review requirements. Approval of a Negative Declaration or Mitigated Negative Declaration or certification of a Final EIR shall be deemed to be a finding that the document has been

prepared in compliance with CEQA and State and local CEQA guidelines and not an approval of a project. Certification of a Final EIR or approval of an ND or MND does not imply that the City endorses the proposed project nor that the City will approve the necessary permit applications.

L. **Timing of Environmental Review.** When a development project is subject to environmental review, all decision-making officials and entities shall take action on all applications for the project that have been submitted and deemed complete in compliance with the following time limits unless State or Federal law mandate a shorter deadline. Notwithstanding these deadlines, the Applicant may request in writing and the City may approve a single extension for a period not to exceed 90 days unless State law authorizes a longer extension. These deadlines do not apply to any action that has been appealed to the City Council in accordance with Chapter 19.39: Appeals.

1. Within 60 days of the date the City has determined the project exempt from environmental review;
2. Within 60 days of the date the Negative Declaration or Mitigated Negative Declaration has been completed and adopted for project approval;
3. Within 180 days from the date the decision-making entity certifies the Final EIR.

19.42.030 Mitigation Monitoring Program

A. **Program Contents.** The City shall approve a mitigation monitoring and reporting program for all projects that it approves via a Mitigated Negative Declaration or a Final EIR. The purpose of the mitigation monitoring program is to ensure that the project applicant complies with all of the provisions or changes identified as mitigation measures during implementation of the project. The Mitigation Monitoring and Reporting Program (MMRP) shall consist of the following:

1. **Mitigation Implementation Plan.** A plan which outlines in detail the manner in which mitigation measures will be implemented during preconstruction, construction and post-construction phases of the project;
2. **Compliance Schedule.** A schedule indicating the phase of the project (preconstruction, construction or post-construction) in which mitigation measures will be implemented;
3. **Compliance Reports.** Reports specifying how and when each mitigation measure was implemented; and
4. **Verification Report(s).** Report(s) made by the city pursuant to an inspection of the project to determine if the applicant has properly and timely implemented mitigation measures identified in the environmental document for the project as set forth in the mitigation implementation plan and compliance schedule.

- B. **Submittal and Approval.** The MMPR shall be prepared and considered as part of an MND or EIR. The Applicant shall pay fees to the City in an amount not exceeding the reasonable cost for monitoring compliance with the Mitigation Plan.
- C. **Enforcement.** Failure to comply with the conditions and requirements of an approved mitigation monitoring and reporting program shall be considered a violation of the conditions of approval of a project. Such violations shall be subject to enforcement in accordance with the provisions of this Code.
- D. **Amendment of Mitigation Program Not Permitted Following Adoption.** Unless specifically authorized or required by the conditions of project approval, neither CEQA nor this Zoning Ordinance authorize the City to modify or add mitigation measures if the monitoring program shows that the mitigation measures have not achieved the desired result.

19.42.040 Appeals

Notwithstanding other provisions of this Zoning Ordinance, the Applicant or any aggrieved person may appeal the following environmental determinations directly to City Council by filing a written appeal with the City Clerk within 10 days of the date of action or notice of determination.

- A. Determination that a project is or is not subject to environmental review.
- B. Determination that a project is exempt from environmental review.
- C. Approval of a Negative Declaration or Mitigated Negative Declaration.
- D. Certification of a Final Environmental Impact Report.