IMPLEMENTATION PROCEDURES FOR THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Intent.

The intent of this policy statement is to protect the environment of the City of Newport Beach, to comply with the California Environmental Quality Act (CEQA), and to implement the basic principles, objectives, and criteria contained in the Guidelines adopted by the Secretary for Resources pursuant to the provisions of California Environmental Quality Act, as amended.

These implementation procedures are intended to satisfy the requirements of Sec. 15022 of the CEQA Guidelines, and are designed to be used in conjunction with the CEQA statutes and Guidelines. In the event that any provision of this policy is found to be inconsistent with CEQA, the Guidelines or case law, this policy shall be revised to comply with applicable law.

B. Definitions.

As used in this policy statement, the following definitions shall apply:

1. *California Environmental Quality Act (CEQA)* means Public Resources Code, Sections 21000 et seq., as amended.

2. *CEQA Guidelines* means the "Guidelines for Implementation of the California Environmental Quality Act", prepared by the Secretary for Resources.

3. All definitions contained in CEQA and the Guidelines shall also apply to this policy statement.

C. General Policies.

The following general policies shall apply:

1. The City, in implementing the requirements of CEQA, shall, wherever possible, integrate these procedures into the existing planning and review procedures of the City.

2. In reviewing and assessing the significance of environmental impacts, the City shall be guided by the adopted General Plan policies and standards.

D. Environmental Determinations.

1. Activities Not Subject to CEQA.

This policy statement shall apply only to activities that are subject to CEQA. Activities that are not "Projects" as defined in Guidelines Sec. 15378, and activities that are "Ministerial" as defined in Guidelines Sec. 15369 are not subject to CEQA or this policy statement.

Examples of City activities that are not normally subject to CEQA include but are not limited to, the following:

Business licenses
Parking permits
Sign permits
Demolition permits
Grading permits
Building permits
Final subdivision maps
Certificates of use and occupancy
Coastal Commission Approvals in Concept

Exceptions. There may be instances where unusual circumstances cause one of these activities to be considered a discretionary action subject to CEQA. Examples include, but are not limited to, the following:

a. Any building permit or grading permit application or other action which is normally considered ministerial but due to special circumstances is determined to have the potential to cause a significant effect on the environment. Examples may include the following:

Work in an area of unusual erosion potential or ground instability

Work affecting scenic or sensitive biological resources

An activity that may generate substantial public health impacts, such as noise, odors, or toxic materials

b. Any building or grading permit in a sensitive area for which no prior CEQA review has occurred and no discretionary permit (e.g., use permit, site plan review) is required.

Determination. The Community Development Director shall have the authority to determine whether an activity is subject to CEQA.

Action by the Decision-Making Body. No findings or discussion of CEQA compliance shall be required for activities that the Community Development Director has determined not to be subject to CEQA.

2. Projects that are Exempt from CEQA.

CEQA and the Guidelines provide that the following types of projects are exempt from the requirement to prepare an Initial Study unless there are special circumstances that could result in significant environmental effects.

a. Statutory Exemptions. Activities that qualify for a statutory exemption as provided under Sec. 15260 et seq. of the Guidelines do not require further environmental review.

b. Categorical Exemptions. The various classes of categorical exemptions are contained in Section 15300 et seq. of the Guidelines. The discussion of exceptions contained in Section 15300.2 shall apply particularly to projects and activities that would affect the shoreline, bluffs, wetlands, public views and other sensitive environmental resources. The Community Development Director shall have the authority to interpret the applicability of Categorical Exemptions to particular projects, including City-sponsored activities (e.g., Zoning Code amendments, assessment districts, construction and maintenance of utilities) and privately-initiated applications.

c. "General Rule" Exemptions. During the preliminary review of an application, each discretionary project that is not covered under a statutory or categorical exemption shall be evaluated to determine

whether it qualifies for an exemption under the general rule contained in Sec. 15061(b)(3) of the Guidelines, which states, "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Guidelines further encourage agencies to adopt a list of project types that would qualify for the general rule exemption. Project types which qualify for this exemption include, but are not limited to:

i. Minor changes to the Municipal Code which do not authorize physical development.

ii. Minor changes to public infrastructure such as installing trees; replacing or upgrading streetlights, traffic signals, etc.; and other public improvements of a minor nature.

iii. Administrative City actions such as budget amendments, professional services agreements, etc. which do not involve projects which affect the physical environment.

Determination. The Community Development Director shall have the authority to determine the applicability of exemptions for all public and privately initiated projects.

Action by the Decision-Making Body. Prior to approval of any project that is exempt from CEQA, such a finding shall be affirmed by the decision-making body.

Notice of Exemption. After approval of a project that was found to be exempt, the Community Development Director may prepare and file a Notice of Exemption as provided under Section 15062 of the Guidelines.

3. Initial Studies.

If a project is subject to CEQA and is not exempt under one of the provisions listed under Section D.2, the Community Development Director shall conduct an Initial Study according to the requirements contained in Section 15063 of the Guidelines. Where it is determined that consultant assistance is required to complete the Initial Study, the procedural requirements contained in Section E shall apply.

Applicant's Responsibilities. The applicant shall submit all information determined by the Community Development Director to be necessary for the preparation of the Initial Study. In addition, when consultant assistance is required the applicant shall be responsible for all costs as provided under Sections E and F.

Determining Significant Effects. In determining whether or not a project may have a significant effect the City will generally follow the guidance contained in Section 15064 and Appendix G of the Guidelines. In addition, the following shall be considered in determining whether or not a project may have a significant impact, in view of the particular character and beauty of Newport Beach:

a. A substantial change in the character of an area by a difference in use, size or configuration is created.

b. Substantial grading, excavating or other alteration to the natural topography.

c. Substantial alteration of the shoreline or waters of the bay or ocean either directly or indirectly.

Determination. On the basis of the information and analysis contained in the Initial Study, the Community Development Director shall determine whether a Negative Declaration or EIR should be prepared, as provided by Sec. 15063(b) of the Guidelines.

4. Negative Declarations.

As provided in Section 15070 of the Guidelines, the Community Development Director shall prepare a proposed Negative Declaration for a project subject to CEQA when either:

a. The Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment; or

b. The Initial Study identifies potentially significant effects, but:

i. Revisions in the project made by or agreed to by the applicant before the proposed Negative Declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

ii. There is no substantial evidence before the agency that the project as revised may have a significant effect on the environment.

Notice and Posting of a Proposed Negative Declaration. The Community Development Director shall provide notice of a Negative Declaration as required by Sec. 15072 of the Guidelines.

Action by the Decision-Making Body. Prior to approval of any project for which a Negative Declaration was prepared, appropriate findings shall be prepared by the Community Development Director for consideration by the decision-making body.

Notice of Determination. Within 5 working days following approval of a project for which a Negative Declaration was prepared, the Community Development Director shall prepare and file a Notice of Determination as provided under Section 15075 of the Guidelines.

5. Environmental Impact Reports.

If the Initial Study shows that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the Community Development Director shall either prepare a Draft EIR or use a previously certified EIR which the Community Development Director determines would adequately analyze the project.

Applicant's Responsibilities. The applicant shall submit all information determined by the Community Development Director to be necessary for the preparation of the EIR. In addition, when consultant assistance is required the applicant shall be responsible for all costs as provided under Sections E and F, below.

Consultant Assistance. If consultant assistance is required in the preparation of a Draft EIR, the procedures contained in Section E, below, shall be followed.

Notice of Preparation. The Community Development Director shall prepare and distribute a Notice of Preparation as provided by Sec. 15082 of the Guidelines. The NOP shall be reviewed by the Environmental Quality Affairs Committee pursuant to City Council Resolution No. 98-17.

Screencheck Draft EIR. If a consultant is retained to assist the City in preparing a Draft EIR, the Community Development Director may require the consultant to submit one or more screencheck drafts for review prior to finalizing the Draft EIR for publication.

Notice of Completion of a Draft EIR. The Community Development Director shall prepare and distribute a Notice of Completion as provided by Sec. 15085 of the Guidelines. Copies of the NOC and Draft EIR may also be provided to the Environmental Quality Affairs Committee for their review pursuant to City Council Resolution No. 98-17.

Final EIR. After completion of the Draft EIR public review period the Community Development Director shall prepare a Final EIR as provided by Sec. 15089 of the Guidelines.

Action by the Decision-Making Body. Prior to approval of any project for which an EIR was prepared, the Final EIR shall be certified as provided by Guidelines Sec. 15090 and appropriate findings as required by Sec. 15091, 15092 and 15093 shall be prepared by the Community Development Director for consideration by the decision-making body.

Notice of Determination. Within 5 working days following approval of a project for which an EIR was prepared, the Community Development Director shall prepare and file a Notice of Determination as provided under Section 15075 of the Guidelines.

E. Consultant Assistance.

When the Community Development Director determines that consultant assistance is required for the preparation of an Initial Study, Negative Declaration or EIR, the following procedures shall be followed:

1. Consultant List. The Community Development Director shall maintain a list of consultants having a sufficient variety of expertise to assist the Community Development Director in the preparation of Initial Studies or EIRs when required.

2. Consultant Selection. When outside assistance is required, a consultant shall be selected by the Community Development Director from the City's consultant list based on the nature of the project and the expertise of the consultant. If it is determined by the Community Development Director or requested by the applicant that proposals should be solicited from more than one consultant, the Community Development Director shall prepare and distribute a Request for Qualifications (RFQ) or Request for Proposals (RFP). Following receipt of proposals or statements of qualifications, the Community Development Director shall evaluate the submittals and select the best-qualified consultant to assist in the preparation of the EIR. The applicant may submit recommendations regarding the selection of a consultant, but the final decision regarding consultant selection shall be made by the Community Development Director.

3. Scope of Work and Budget. After a consultant has been selected a detailed scope of work and budget shall be prepared by the consultant and the Community Development Director.

4. Contract Approval and Administration. The proposed scope of work and budget shall be submitted to the applicant for approval. If the proposal is acceptable, the applicant shall submit a deposit to cover the consultant costs plus reasonable City administrative expenses. The consultant shall not be authorized to commence work until such deposit is received from the applicant. The amount of the deposit will normally be the total project budget; however, for large projects the deposit may be made in two or more payments subject to approval by the Community Development Director. After receipt of the applicant's deposit the Community Development Director shall prepare and execute a contract for consultant services in a form meeting the approval of the City Attorney, and shall administer the contract through project completion. At the conclusion of the project any unused deposit shall be returned to the applicant.

F. Fees.

The preparation of an Initial Study, Negative Declaration or EIR shall be subject to the following fees:

1. For Initial Studies and Negative Declarations prepared by the Community Development Director without consultant assistance, a reasonable fee shall be collected as established by resolution of the City Council as part of the Planning Department Fee Schedule.

2. For Initial Studies and EIRs prepared with consultant assistance, there will be a City fee as required by the municipal code.

3. No future applications shall be accepted from any applicant, and no permits or entitlements shall be approved or issued until all prior indebtedness to the City incurred under this section by such applicants has been paid in full.

4. The amount of the fee shall become an obligation of the applicant to the City whether or not the permit or entitlement is issued, or whether or not the applicant exercises the right to obtain the permit or entitlement. Such fees accrue and become payable when the City gives notice to the applicant of the amount of such fees. This liability shall be enforceable in any court of competent jurisdiction. In the event suit is filed by the City, in addition to the amount of the fee, applicant shall pay reasonable attorney's fees.

G. Authority of the Community Development Director.

The Community Development Director shall have authority for the interpretation of CEQA, the Guidelines, and this policy statement as they may affect any particular activity or project, including private development projects and City public works projects. In addition, the Community Development Director shall have authority for the following actions:

1. Determining whether activities are subject to CEQA.

2. Making recommendations regarding the applicability of Categorical, Statutory and "General Rule" Exemptions for consideration by the decision-making body.

3. Preparing Initial Studies for projects that are not exempt from CEQA.

4. Preparing and posting proposed Negative Declarations.

5. Preparing and distributing Notices of Preparation and Environmental Impact Reports for City-sponsored projects and projects for which the City has approval authority as Lead Agency.

6. Preparing responses to comments on Negative Declarations and EIRs.

7. Preparing draft findings, resolutions and mitigation monitoring programs for consideration by decision-making bodies.

8. Making recommendations to the Environmental Quality Affairs Committee, the Planning Commission, the City Council, or other City officials regarding the requirements of CEQA or the adequacy of environmental documents.

9. Reviewing and commenting on Negative Declarations, Notices of Preparation, Draft EIRs, or other environmental documents prepared by other agencies.

10. Developing administrative procedures for implementation of CEQA and these policies.

11. Providing NOPs, NOCs and staff assistance as needed to the Environmental Quality Affairs Committee.

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