

City of Paso Robles



**Rules and Regulations
For the Implementation of
The California Environmental Quality Act**

September 2011

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1. PURPOSE, AUTHORITY AND SCOPE

1.1 Authority

These rules and procedures are adopted by the City of El Paso De Robles to implement the California Environmental Quality Act, or “CEQA” (California Public Resources Code Sections 21000 et seq.). The basic goal of CEQA is to maintain a high-quality environment now and in the future, while the specific goals of CEQA are for California’s public Agencies to:

1. Identify the significant environmental effects of their actions; and, either
2. Avoid those significant environmental effects, where feasible; or
3. Mitigate those significant environmental effects, where feasible.

The basic purposes of CEQA are to:

1. Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
2. Identify ways that environment damage can be avoided or significantly reduced.
3. Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
4. Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

These rules and procedures are consistent with, and are intended to supplement, the Guidelines for Implementation of CEQA: California Code of Regulations, Title 14, Sections 15000-15387 and Appendices A – L thereto (hereafter referred to as “the Guidelines”). The Guidelines are hereby incorporated by reference; a copy of the Guidelines shall be kept on file in the Community Development Department.

1.2 Purpose

Section 21082 of CEQA and Section 15022 of the Guidelines require public agencies to adopt objectives, criteria, and specific procedures consistent with CEQA and the Guidelines for administering their responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. These rules and procedures are intended to address the most common situations faced by the City on a day-to-day basis in complying with CEQA. Where there are situations that are not addressed by these rules and procedures, or if any portion of these rules and procedures conflicts with any provision of, or amendment to, CEQA or the Guidelines, the provisions of CEQA and the Guidelines shall control.

1.3 Scope

These rules and procedures shall apply to the City of Paso Robles. The requirements of these rules and procedures shall apply to all projects, both public and private, which require city approval.

1.4 Revisions

The Community Development Director may, from time to time, revise these rules and procedures when he/she determines that: (1) such revisions are necessitated by amendments to CEQA, (2) such revisions are consistent with the goals, policies and objectives of the City Council, and (3) the

revisions are essentially technical in their nature, and conform to the Guidelines. All other revisions shall be approved by Resolution of the City Council.

2. DEFINITIONS

The following definitions are intended to clarify and supplement, but not replace or negate, the definitions contained in the Guidelines. In the event of inconsistency, the Guidelines shall control.

Advisory Body: The public body or administrative official required by State Law or City Ordinance or Resolution to consider and make recommendations on a specific type of project. The Planning Commission is the advisory body for the following types of projects: general plan amendments, specific plans, and rezoning. (The Planning Commission has final decision making authority for tract maps, parcel maps, planned developments, conditionals use permits and variances. Decisions on these matters are appeal-able to the City Council).

Approval:

- a. Approval means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.
- b. With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

Categorical Exemptions: “Categorical exemption” means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment. A list of and descriptions for Categorical Exemptions is contained in Sections 15300 – of 15333 of the Guidelines.

City: City means the City of El Paso De Robles.

Community Development Department: The Community Development Department shall refer to the staff of the Planning, Engineering, and Housing Divisions of the City of El Paso De Robles.

Coordinator (Environmental Coordinator): A person designated by the City Council who makes recommendations on the potential environmental impacts of projects and who manages the environmental review process for the City. The Community Development Director or his/her designee shall be the Environmental Coordinator.

Council: Council means the City Council of the City of El Paso De Robles.

County Clerk: County Clerk is the County Clerk for the County of San Luis Obispo.

Decision-Making Body: “Decision-making body” means the City Council, Planning Commission, or Community Development Director/Zoning Administrator..

Director: Director means the Director of Community Development for the City of Paso Robles or his/her designee.

Discretionary Project: “Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

Guidelines: Guidelines means the State Guidelines for the Implementation of the California Environmental Quality Act California Code of Regulations, Title 14. Natural Resources, Division 6 Resources Agency, Chapter 3.

Lead Agency: “Lead Agency” means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in §15051.

Ministerial Projects: “Ministerial” describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or

judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength and safety requirements in the International Building Code, and the applicant has paid his fee.

Mitigation Measures: “Mitigation” includes:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action.
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- c. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- e. Compensating for the impact by replacing or providing substitute resources or environments.

Project:

- a. “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.
- (2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

- b. Project does not include:

- (1) Proposals for legislation to be enacted by the State Legislature;
- (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
- (3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative.
- (4) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.
- (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

- c. The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.
- d. Where the Lead Agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to

several governmental approvals under subdivisions (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

Responsible Agency: “Responsible Agency” means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

Trustee Agency: “Trustee Agency” means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies include:

- a. The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department;
- b. The State Lands Commission with regard to state owned “sovereign” lands such as the beds of navigable waters and state school lands.

3. APPLICATIONS PROCEDURES

3.1 Applicability

A. General. Appendix A of these rules and procedures contains a flow chart showing a summary of the complete CEQA process. (This flow chart is also Appendix A of the Guidelines.)

B. Non-Applicability/Exemption from CEQA. No environmental assessment is required under CEQA for the following circumstances:

1. If the activity is determined not to be a project as defined by Guidelines §15378; Pub. Res. Code §21065.
2. If the activity is ministerial (Pub. Res. Code §21080(b)(1); Guidelines §§15268, 15369).
3. If the activity is one which the decision-making body will disapprove (Pub. Res. Code §21080(b)(5); Guidelines §15270).
4. The activity is an emergency project (pub. Res. Code §§21080(b)(2), (3), (4); Guidelines §15269).
5. The activity is exempt by statute (see, e.g. Article 18, commencing with §15260 of the Guidelines).
6. The activity is categorically exempt (Pub. Res. Code §§21080(b)(9), 21084; Guidelines §§15301-15332).
7. The setting, modification, structuring, or restructuring of certain rates, tolls, fares, or charges other than rate increases to fund system expansions are exempt from CEQA review (Pub. Res. Code §21080(b)(8); Guidelines §15273).
8. Feasibility or planning studies carried out by a public agency when the agency has not approved, adopted, or funded any particular action (Pub. Res. Code §§21102, 21150).
9. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. 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; (Guidelines §15061(b)(3)).

C. Notice of Exemption. The City may or may not file a Notice of Exemption with the County Clerk pursuant to Guidelines §15062. If the Notice of Exemption is filed and posted, a 35-day statute of limitations will commence from the date of project approval; if the notice is not filed, a 180-day statute of limitations will apply (Guidelines §15062(d)). Appendix B is a Notice of Exemption. (This flow chart is the same as Appendix E of the Guidelines.)

D. Public Projects / Private Projects. For both public and private projects, the environmental determination and documents shall be prepared by or under the supervision of the Community Development Department of the City of Paso Robles.

3.2 Pre-submittal Meeting

When requested by an applicant, a pre-submittal meeting may be held with Community Development Department staff to discuss the general environmental issues affecting a project. Although a pre-submittal meeting is not required, it is strongly encouraged where there is a possibility that the project will have a significant effect on the environment.

3.3 Determining If Applications Are Complete

Once a project application has been submitted, it shall be checked to determine if it contains the required information prior to acceptance by the Community Development Department. A checklist of required items for each type of application is available at the Community Development

Department and is available on the City’s website (www.prcity.com). It is the responsibility of the applicant to ensure that all required information is provided.

Appendix C is an Environmental Information Form that applicants must submit for all applications that are subject to CEQA. (This form is the same as Appendix H of the Guidelines.)

A. Incomplete Applications. When the Director determines that an application is incomplete, the applicant shall be notified in writing, within 30 days of the submittal, specifying the areas which were found to be incomplete, and what is needed to complete the application.

B. Complete Applications. The Director shall notify the applicant in writing when the application has been found to be complete. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

Time Limits

Environmental Document Time Limits	<ul style="list-style-type: none"> • 30 days from application’s acceptance as complete: Lead Agency must decide to prepare Negative Declaration or EIR. • 45 days from sending a Notice of Preparation for an EIR, the Lead Agency must execute consultant contract – if the EIR is to be prepared by a consultant. • 180 days from application’s acceptance as complete: Lead Agency must complete Negative Declaration. • 1 year from application’s acceptance as complete: Lead Agency must certify EIR.
Lead Agency Project Approval Time Limits	<ul style="list-style-type: none"> • 60 days from exemption decision or adoption of Negative Declaration. • 90 days from date of EIR certification for projects subject to Public Resources Code §§ 21110 or 21151 (housing projects in which 49% or greater of the units are reserved for lower income households). • 180 days from date of EIR certification for all other projects.
Responsible Agency Project Approval Time Limits	<ul style="list-style-type: none"> • 180 days after responsible agency accepts application as complete or after Lead Agency action, whichever is later.

4. EXEMPTION PROCESS

4.1 Exemption Determination

Within 30 days of accepting a planning application submittal as being complete, the Director shall determine if the project is exempt from the provisions of CEQA. This determination shall be made in accordance with the provisions of the Guidelines outlined below. NOTE: If the Coordinator determines that an activity or type of projects listed below may have a significant effect on the environment, the Coordinator may determine that it is not exempt from the requirements of CEQA.

A. Statutory Exemptions -- Article 18 of CEQA (Commencing with §15260 of the Guidelines)

B. Categorical Exemptions -- Article 19 of CEQA (Commencing with §15300 of the Guidelines) and the application of that categorical exemption is not barred by one of the exceptions set forth in §15300.2 of the Guidelines.

C. Projects with no possibility of significant effect -- The activity is covered by the general rule that CEQA only applies to projects which have potential for causing a significant effect to the environment, §15061(b)(3) of the Guidelines.

D. The project will be rejected or disapproved by a public agency – See §15061(b)(4) of the Guidelines.

E. Residential projects undertaken pursuant to a specific plan which meet the requirements of §15182 of the Guidelines.

F. The project is exempt pursuant to provisions of Article 12.5 of CEQA. – See Sections 15191 – 15196, which provide exemptions for agricultural housing, affordable housing, and infill residential.

G. “Certified regulatory programs.” There is also a partial exemption for “certified regulatory programs.” (Guidelines §§15250-15253)

4.2 Completing the Exemption Form

After the Director finds that a project is exempt pursuant to §15061 of the Guidelines, and he or she approves or determines to carry out the project, the Director may complete an Notice of Exemption Form (Appendix B).

4.3 Filing of Notice of Exemption

Following approval of an exempt project by the decision making body, a Notice of Exemption (Appendix B) may be filed as follows:

A. Public projects. The Coordinator may file a Notice of Exemption in accordance with §15062 of the Guidelines after the project's approval, if at all.

B. Private Projects. The Coordinator will not file a Notice of Exemption for private projects, but forms will be available at the Planning Division and the applicant should be encouraged to do so to shorten the statutory challenge period provided in CEQA, §15062 (d): The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency’s decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

5. INITIAL STUDY PROCESS

"Initial Study" means a preliminary analysis prepared by the Lead Agency to determine the type of environmental document to process (e.g. EIR, Negative Declaration, or Mitigated Negative Declaration). It is also used to identify the significant environmental effects to be analyzed in an EIR. Use of the Initial Study is discussed in the Guidelines Article 5, commencing with §15060.

5.1 Conduct of the Initial Study

An initial study shall be prepared for all public and private projects once they are determined that an activity is subject to CEQA and no statutory or categorical exemptions apply, unless it has been determined that an EIR will be required and the applicant agrees. All initial studies shall be conducted in accordance with §15063 of the Guidelines.

5.2 Consultation

As soon as the determination to prepare an Initial Study has been made, Planning staff shall consult informally with, and solicit recommendations from, all Responsible and Trustee agencies (see §15063(g) of the Guidelines), and City departments. Appendix D lists reviewing agencies with special expertise in various subject areas which may be used to solicit comments in the review of environmental documents. For most projects, this consultation can be adequately satisfied by a telephone call to the appropriate member of the agency's staff. A written record of the phone call (e.g. memo to file or a funning phone log) shall be placed in the project file. The comments and recommendations of the Responsible or Trustee agency and City Departments shall be reflected in the Initial Study.

5.3 Evaluating Projects

A. Planning staff shall evaluate projects for their effect on the environment by using the Environmental Checklist Form (Appendix E), Environmental Information Form (Appendix C), and by calling upon various sources of information, including the General Plan, previously completed EIRs and other environmental studies, and make a written recommendation to the Coordinator which is supported by factual evidence.

1. For projects with no previous environmental documents, or previously prepared documents found to be inadequate because changes have been made to the project, the project setting, or because of the length of time since the original preparation date, the analysis shall focus on the identification of significant effects according to sections 15064 and 15065 of the Guidelines. These sections describe the criteria and mandatory findings for establishing whether a project may have a significant adverse effect on the environment.
2. When a project being analyzed is a change to, or further approval for, a project for which an environmental document was previously certified or adopted, provisions of sections 15162 (Subsequent EIRs and Negative Declarations), 15163 (Supplement to an EIR or Negative Declaration), and 15164 (Addendum to an EIR) of the Guidelines will apply. Guidelines §15064(f)(7)

B. If additional outside review is required to determine the potential significant effects of a project, (e.g., a study of potential traffic impacts) it should be determined at this point, or earlier in the process if possible, by City staff. Any fees for this study shall be borne by the applicant.

Determining the Significance of Impacts from Greenhouse Gas Emissions

1. The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in CEQA Guidelines, Section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have the discretion to determine, in the context of a particular project, whether to:
 - a. Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or
 - b. Rely on a qualitative analysis or performance based standards.
2. A lead agency should consider the following factor, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:
 - a. The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
 - b. Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.
 - c. The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.
3. Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with CEQA Guidelines section 15126.4(a), lead agencies shall consider all feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emission. Measures to mitigate the significant effects of greenhouse gas emission may include, among others:

- a. Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
- b. Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;

- c. Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;
- d. Measures that sequester greenhouse gases;
- e. In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

D. Upon completion of the Initial Study, Planning staff shall transmit it along with their preliminary determination to the Coordinator. If it is found that insufficient information exists to determine whether a project will have a significant effect on the environment, additional information from the applicant or one or more focused studies (e.g., traffic, biological, cultural, etc.) shall be required as appropriate to the nature of the project and/or the project site.

E. After a preliminary determination that a project may have a significant effect on the environment, the Coordinator should meet with the applicant in an attempt to reach agreement on acceptable mitigation measures and/or project alternatives which would lessen or avoid the significant effects outlined in the Initial Study. Where agreement is reached, the Coordinator shall revise the Initial Study to incorporate the changes, alternatives and/or mitigation. Changes to the project or mitigation measures shall be agreed to in writing by the applicant and documented in the Initial Study prior to the project being noticed and scheduled for a public hearing. Appendix F contains a sample Mitigation Agreement.

5.4 Preliminary Determinations

The Coordinator, on the basis of the environmental analysis and other information contained in the Initial Study, shall make one of the preliminary determinations listed below no later than 30 calendar days after accepting the application as complete. (NOTE This deadline may be extended an additional 15 days upon the consent of both the Coordinator and the project applicant as provided in Section 15102 of the Guidelines.)

A. That there is no possibility that the proposed project may have a significant effect on the environment and prepare a Negative Declaration.

Proceed to Chapter 6, Process for Negative Declarations and Mitigated Negative Declarations.

B. That, although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because mitigation measures have been added to the project which lessen these potential impacts to acceptable levels and prepare a Mitigated Negative Declaration.

This determination should be made in cases where the mitigation measures are readily apparent and can be agreed to by the Coordinator and the applicant. The City shall prepare a reporting and monitoring program for any mitigation measures incorporated into the project to ensure compliance, as set forth in Chapter 13 of these rules and procedures.

Proceed to Chapter 6, Process for Negative Declarations and Mitigated Negative Declarations.

C. That the project may have a significant effect on the environment, pursuant to §15064 of the Guidelines and prepare an EIR.

Proceed to Chapter 7, EIR Process.

- D.** That, pursuant to §15153 of the Guidelines, an EIR has already been prepared which adequately evaluates the projects' potential effects, and no additional document is needed.

Proceed to Chapter 8, Previous EIR Process.

- E.** That an EIR has already been prepared, and either a supplement or an addendum is appropriate (only minor additional information or alterations would be necessary to make the previous EIR adequately apply to the project.)

Proceed to Chapter 9, Program EIR Process.

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6. PROCESS FOR NEGATIVE DECLARATIONS AND MITIGATED NEGATIVE DECLARATIONS

“Negative Declaration” means a written statement by the Lead Agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a Negative Declaration are described in §15071 of the Guidelines.

“Mitigated Negative Declaration” means a Negative Declaration prepared for a project when the Initial Study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

6.1 Preparation of a Draft Negative Declaration

As soon as the Coordinator determines that a project will not have a significant effect on the environment or the Initial Study identifies potentially significant effects but:

1. Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed Mitigated Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and
2. There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment,

Planning staff shall prepare a draft Negative Declaration or Mitigated Negative Declaration in accordance with §15071 of the Guidelines.

To meet the requirements of the first condition, above, the applicant must:

- a. Revise the project plans (i.e., proposal letter, design plan drawings, and/or other exhibits explaining how the project will be constructed and operated) to show that the necessary mitigation measures will be incorporated into the project, and/or
- b. Execute a written Mitigation Agreement (Appendix F) in which the applicant agrees to carry out all measures identified by the Initial Study to mitigate impacts to a point where clearly no significant effects would occur.

6.2 Content of a Negative Declaration

A Negative Declaration circulated for public review shall include:

1. A brief description of the project, including a commonly used name for the project, if any;
2. The location of the project, preferably shown on a map, and the name of the project proponent;
3. A proposed finding that the project will not have a significant effect on the environment;
4. An attached copy of the Initial Study documenting reasons to support the finding; and
5. Mitigation measures, if any, included in the project to avoid potentially significant effects.

The Draft Negative Declaration or Draft Mitigated Negative Declaration may establish thresholds, where appropriate, for a given project and mitigation measures based on these thresholds which

reduce any potential significant impacts to a less than significant level. If revisions to the project are proposed during its review process, the project should be compared to the original project and environmental review to determine whether changes or additions to the mitigation measures are required. Changes in the project description which are designed to mitigate significant environmental effects shall be completed before the Draft Negative Declaration is released for public review as required by §15070 (b)(1) of the Guidelines.

6.3 Public Notice and Review

A. General. Public notice and review of the Draft Negative Declaration or Draft Mitigated Negative Declaration shall be for a 20 calendar day period prior to review or hearing by the body that has approval authority (30 days if State Clearinghouse review is required). (See Subsection B, below, for rules on Clearinghouse review.) It may be combined with the public notice required for a project, and follow requirements of §15072 and §15073 of the Guidelines.

1. A Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall:
 - a. Be mailed to all Trustee Agencies, Responsible Agencies, and the County Clerk. If State Clearinghouse review is required, said notice shall also be filed with the State Clearinghouse. Mailing shall allow for each recipient to receive said notice no later than the start of the 20 day or 30 day public review period.

The materials distributed to Trustee and Responsible Agencies need only include the Notice of Intent to Adopt a Negative Declaration (or Mitigated Negative Declaration), a copy of the Initial Study, and mitigation measures, if applicable. Planning staff may forward additional supporting information where they determine it would help in the review of the environmental determination. (NOTE: Failure to comply with this self-imposed requirement shall not invalidate the project approval.)

- b. Be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing; and

Planning staff may forward additional supporting information (e.g., copy of the Initial Study and mitigation measures) to such organizations and individuals if they have specifically requested it. (NOTE: Failure to comply with this self-imposed requirement shall not invalidate the project approval.)

- c. Be given by one of the following methods:
 - (1) Publication at least once in a newspaper of general circulation;
 - (2) Posting on- and off- the site in the area where the project is to be located and on the City Hall bulletin board;
 - (3) By direct mail to owners of property within 300 feet of the project as shown on the latest equalized assessment roll and as required for the specific project.
 - d. Be mailed to the applicant and his/her representatives.

Appendix G is a sample Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

2. A Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall specify the following:
 - a. A brief description of the proposed project and its location.
 - b. The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration.
 - c. The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.
 - d. The address or addresses where copies of the proposed negative declaration or Mitigated Negative Declaration including the revisions developed under §15070(b) and all documents referenced in the proposed Negative Declaration or Mitigated Negative Declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.
 - e. The presence of the site on any of the lists enumerated under §65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.
 - f. Other information specifically required by statute or regulation for a particular project or type of project.

B. State Clearinghouse Distribution. In addition to the persons and agencies listed in Section A.1, above, the draft Negative Declaration or draft Mitigated Negative Declaration shall also be distributed to the State Clearinghouse when the project is determined to be of statewide, regional or area wide significance per §15206 of the Guidelines.

The materials distributed to the State Clearinghouse for a Negative Declaration or Mitigated Negative Declaration need to include the Notice of Intent (NOI), Appendix G and a Notice of Completion (NOC), Appendix L, and 15 copies of the Initial Study, mitigation measures (if applicable) and any supporting information that would help in the review of the environmental determination.

C. Public Hearings. As provided by §15202 of the Guidelines, CEQA does not require formal hearings at any stage of the environmental review process. However, if an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects. In addition, the Coordinator may hold a public hearing on the environmental review process. This is done if a project does not require approval by the Planning Commission or City Council.

6.4 Completing the Negative Declaration or Mitigated Negative Declaration

A. If no comments are received during the 20 day review period (30 days for State Clearinghouse review) the Negative Declaration or Mitigated Negative Declaration may be accepted as complete.

B. If comments are received, the Coordinator shall review the comments and after giving them consideration, make one of the following determinations:

1. That an EIR should be prepared because the comments:

- a. Fairly argue that on the basis of substantial evidence, the project may have a significant effect on the environment; OR
 - b. Indicate there is serious public controversy concerning the environmental effects of the project, which is supported by substantial evidence. (Controversy not related to an environmental issue does not require the preparation of an EIR.) OR
2. That the Negative Declaration or Mitigated Negative Declaration should be accepted as complete because the comments do not provide the basis for requiring an EIR, as outlined above. The Coordinator may, however, revise the Negative Declaration or Mitigated Negative Declaration and Initial Study in response to comments received, before accepting it as complete. If the Negative Declaration must have “substantial revision” as described in §15073.5 of the Guidelines, the document shall be re-circulated and noticed per Sections 15072 and 15073 of the Guidelines.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Negative Declaration or Mitigated Negative Declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

6.5 Approval of the Negative Declaration or Mitigated Negative Declaration

Before approving a project for which a Negative Declaration or Mitigated Negative Declaration has been prepared, any advisory body shall review and consider, and the decision-making body shall review and consider the Negative Declaration or Mitigated Negative Declaration. When approving a Mitigated Negative Declaration, a Mitigation Monitoring and Reporting Program, which lists all mitigation measures included in the Initial Study, must be adopted as part of the resolution approving a Mitigated Negative Declaration. Mitigation Monitoring Programs are discussed in more detail in Chapter 13. Appendix H is a sample Mitigation Monitoring and Reporting Program.

6.6 Notice of Determination.

After the decision making body has made a decision to approve a project for which a Negative Declaration or Mitigated Negative Declaration, the Environmental Coordinator shall, as soon as possible but no later than 5 working days following approval of the project, file a Notice of Determination (See Appendix I) with the County Clerk. Failure to notice within the time constraints herein shall in no way be construed to invalidate or set aside the action taken by the body.

The County Clerk Charges a fee of \$25 to file a Notice of Determination. Applicants for which a Negative Declaration or Mitigated Negative Declaration is necessary will be required to deposit a check in the amount of \$25, payable to the “County of San Luis Obispo”, with the City prior to scheduling their project for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

Fish and Game Fees, which are discussed in the following subsection, must also be submitted to the County Clerk at the same time that a Notice of Determination is filed.

If the project requires a discretionary approval from a State Agency, a copy of the Notice of Determination must also be filed with the State Clearinghouse.

6.7 Fish and Game Fees

Pursuant to Fish and Game Code §711.4, the State Department of Fish and Game (DFG) requires all project applicants for which a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report is necessary to pay a filing fee for each proposed project. The required fees will be collected by the County Clerk at the time of filing of Notices of Determination. Project approvals will not be effective until the Notice of Determination has been filed and the fee paid. In 2009, the fee for Negative Declarations and Mitigated Negative Declarations is \$1,993.00, and the fee for Environmental Impact Reports is \$2,768.25. These fees are adjusted annually by the State.

Applicants for which a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report is necessary will be required to deposit a check in the appropriate amount, payable to the “County of San Luis Obispo”, with the City prior to scheduling their projects for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

Note: Although Section 711.4 provides an exemption for projects that the DFG find not to have any effect on fish and wildlife, DFG has not responded to City requests for such findings on City-initiated public works projects or on privately-initiated projects.

7. ENVIRONMENTAL IMPACT REPORT PROCESS

7.1 Types of EIRs

General: This section describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead Agencies may use other variations consistent with the Guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with § 15120 of the Guidelines.

Project EIR: The most common type of EIR that examines environmental impacts of a specific development project and examines all phases of the project including planning, construction, and operation.

Subsequent EIR, Supplemental EIR and Addendum: Subsequent EIRs, Supplemental EIRs, and Addenda to an EIR are required when there is a change in the conditions analyzed in an EIR after the EIR has been certified but before all Lead or Responsible Agencies discretionary authorities have been granted for the project.

Program EIR: A Program EIR generally analyzes broad environmental effects of the program with the acknowledgment that site-specific environmental review may be required for a particular aspect of portions of the program when those aspects are proposed for implementations. It is normally prepared for an agency program or series of actions that can be characterized as one large project as well as for agency plans, policies, or regulatory programs. For example, a General Plan Update EIR is considered to be a Program EIR.

Staged EIR: Like the Program EIR, the “Staged EIR” is prepared for large-scale projects that are planned and developed over a long period of time. The first stage or phase EIR must include a general discussion of the entire project, including cumulative impacts as well as reflect that there will be future environmental documentation including project EIRs. The second-stage EIR will supplement the first, focusing more on detailed impact analysis related to the second-stage approval.

General Plan and Other Plan-Level EIR: General Plan EIRs are prepared for a city or county general plan, and usually meets the requirements for either a Program EIR or a Master EIR. All CEQA reviews on subsequent actions as authorized by the general plan should be based on the General Plan EIR using CEQA’s tiering provision.

Master EIR: Master EIRs are a first-tier document that are similar to Program EIRs, Staged EIRs, and other tiered environmental reviews. Master EIRs may be prepared for general plans, specific plans, projects consisting of smaller individual projects to be implemented in phases, regulations to be implemented by subsequent projects, state highway or transit projects subject to multiple reviews of approvals, regional transportation plans, congestion management plans, California Department of Fish and Game regulations for hunting and fishing, and federal military base reuse plans.

7.2 Decision to Prepare an EIR

The decision to prepare an EIR will be made either during preliminary review under §15060 of the Guidelines or at the conclusion of an Initial Study after applying the standards described in §15064 of the Guidelines. If the project is privately-initiated, the applicant shall be notified in writing of the decision to prepare an EIR.

7.3 Notice of Preparation

After deciding that an EIR is required, the Lead Agency must send a Notice of Preparation (NOP - Appendix J) soliciting participation in determining the scope of the EIR to the State Clearinghouse and to each Responsible and Trustee Agency and to every involve federal agency involved in approving or funding the project. The NOP may include the attached NOP form (Appendix J) however, all requirements listed in §15082 of the Guidelines shall be included.

7.4 Scope of EIR

Based on the results of the Initial Study, information received in response to the NOP, and/or other review of the project, planning staff, along with the selected consultant (if one should be contracted to prepare the environmental document), shall determine the scope of the EIR. A meeting may also be held with responsible agencies, trustee agencies and/or representatives from other City departments to determine the scope of the EIR. In addition, the City may choose to hold a noticed public hearing to solicit comments on the NOP from the public. The scope shall include a listing of all technical reports (traffic, noise, biology, and so forth) as well as any other special analyses which will be required.

7.5 Consultant Selection

The Coordinator shall contract for the preparation of an EIR in accordance with the procedures outlined in paragraph 7.5A, below, or shall direct Planning staff to prepare the environmental document. If a Draft EIR is to be prepared under contract with a consultant, the contract must be executed within 45 days from the date on which City sends a NOP.

A. Consultant Selection

1. The City shall maintain an informal resource list of qualified environmental consulting firms and may use that list as well as other available resources from which to select a consultant to prepare the EIR. This resource list should be compiled based on qualifications submitted by individual firms and should consist of:
 - a. Names and resumes of principals and employees of the firm who will be involved in the preparation of EIRs.
 - b. A listing of any relevant environmental documents prepared by the firm for which the firm was the lead consultant. Additional projects for which the firm was a sub-consultant may also be listed. The name of the project manager should be included, as well as the scope of work and a list of references.

The absence of any of the above noted data from the resource list, or the choosing of an alternative qualified consultant not on the resource list to prepare an EIR or other technical document, shall not invalidate the consultant selection.

2. EIRs shall be prepared by a qualified consultant under contract to the City. Following a determination that an EIR is required, the Director shall prepare a Request For Proposal (RFP) to prepare an Environmental Impact Report (EIR) or other technical report.
3. The RFP should include, a detailed project description, project information, the Notice of Preparation and initial study, if one was prepared, and the scope of work. An RFP should be sent to at least three consulting firms included on the City's EIR consultant resource list, and/or may be sent to additional qualified firms as determined to be appropriate by the Coordinator. The RFP should include a time line for responses to the City. The proposal

shall be required to discuss the work to be done, the time required to complete the work, and the maximum costs for time and materials based on the stated scope of work.

4. The Coordinator shall submit his/her recommendation of a consultant to the City Council which shall approve the consultant.

B. Costs of Preparation. Costs associated with the preparation, printing, and distribution of EIRs and addenda and supplements for private projects shall be borne by the applicant. Prior to the City signing the consultant contract to prepare the EIR, the applicant shall deposit funds sufficient to pay for the required EIR in a City trust account. These funds shall be released by the City to the EIR consultant according to the terms of the Contract for the Preparation of an Environmental Impact Report.

The applicant shall also be required to pay the actual time and materials costs incurred by the City for any additional staff time required to administrate the preparation of the document – in addition to processing the development application for which the EIR is being prepared.

During the preparation of the environmental impact report, the City’s consultant should be allowed free access to the applicant, provided that the Planning Staff is notified ahead of time of any meetings between the applicant and the consultant, and that no meeting be held without Planning staff’s prior knowledge and consent. For instance, it may be advisable that the applicant review and comment on the Draft EIRs project description for accuracy and to ensure no project components are excluded. No information or conclusions should be released by the consultant to the applicant prior to notification to the City of such information.

7.6 Processing the Draft EIR (including subsequent and supplements)

Contents and Format. The EIR shall contain all of the elements specified in §§15120 through 15132 of the Guidelines and Appendix K.

Administrative Draft EIR. The consultant preparing the EIR shall submit an administrative draft EIR for review by City staff within the time allowed by the EIR contract. The consultant shall revise the administrative draft EIR to address City comments within the time specified in the EIR contract.

7.7 Notice of Completion and Public Notice

A. Notice of Completion. As soon as the Coordinator determines that the Draft EIR is properly completed, and is appropriate for distribution and processing, the City or its designee shall complete a Notice of Completion in accordance with §15085 of the Guidelines (See Appendix L).

B. Public Notice. Planning staff shall provide public notice of the availability of the draft EIR in accordance with §15087 of the Guidelines at the same time the Notice of Completion is filed. Public notice that a draft EIR has been completed, and is available for public review (including places where the document is available and the time available for making comments) shall be given to all organizations and individuals who have previously requested such notice and by at least one of the following procedures:

1. Publication at least once in a newspaper of general circulation;
2. Posting on the City hall bulletin board and on the project site; and/or

- 3 By direct mail to owners of all property within 300 feet of the project as shown on the latest equalized assessment roll.

Appendix M is a format for a public notice of availability a Draft EIR.

C. Distribution. Planning staff shall distribute, as provided in Sections 15087 of the Guidelines and below, the Draft EIR when complete, and request written comments during the review period:

1. Public agencies shall use the State Clearinghouse (a division of the State Office of Planning and Research) to distribute draft EIRs to state agencies for review and should use area wide clearinghouses to distribute the documents to regional and local agencies. The EIR may be sent to the San Luis Obispo County Council of Governments (SLOCOG) if the project is of regional significance.
2. Distribution to State agencies, if required, shall be through the State Clearinghouse in accordance with sections 15087 and 15205 of the Guidelines. EIRs forwarded to the Clearinghouse shall include copies of all Appendices.
3. Copies shall also be distributed to members of the advisory and decision making bodies for the project, the City Manager, directors of appropriate City departments, City project staff, and the applicant.
4. Copies of the EIR shall be made available for review in the City Library, at the City Clerk's office, on the City website, and at the Planning Division where loan copies shall be available. Any person wanting a copy of the EIR other than those to whom they have been distributed shall be charged a fee not to exceed the actual cost of reproduction. Documents shall also be made available for purchase via CD-ROM format.

D. Review. The review period shall begin following the distribution of public notices and EIR documents by the Planning staff, and shall be not less than 30 days nor longer than 60 days. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

E. Public Meetings. Although not required, it is the City's practice to hold a public meeting before the Planning Commission during the review period to receive input on the EIR in accordance with §15202 of the Guidelines.

F. Evaluation of Comments and Preparation of Responses. As comments are received, the consultant shall evaluate the comments and have responses prepared. Comments and responses to comments shall be included in the Final EIR as per §15088 and 15132 of the Guidelines.

G. Recirculation of an EIR. A lead agency is required to re-circulate an EIR when significant new information is added to the EIR after public notice is given per §15088.5 of the Guidelines.

7.8 Preparation and Processing of the Final EIR

A. Preparation. A proposed Final EIR shall be prepared by City staff or by a consultant retained by the City per §15089 of the Guidelines. Costs of preparation shall be borne by the applicant if not already included in the original EIR consulted work scope.

B. Contents. The contents of the proposed Final EIR shall be as specified by Sections 15132 of the Guidelines and Appendix K.

C. Format. Generally, when comments are received they shall be attached to the Draft EIR with responses. However, where Planning staff determines that responses to comments will require numerous or substantial revisions to the Draft EIR text, they shall be entered into the text of the existing Draft EIR text to comprise the Final EIR.

D. Distribution. Planning staff shall distribute the proposed Final EIR as soon as it is complete to the advisory or decision making body holding meetings on the project. The proposed Final EIR shall also be forwarded to each responsible agency and shall be kept on file in the Community Development Department and the planning agency of the County of San Luis Obispo if significant effects of the project may impact the County.

E. Certification of the Final EIR. Prior to approving the project, the Lead Agency must certify that the Final EIR was prepared in compliance with CEQA and was presented to the Lead Agency's decision-making body per §15090 of the Guidelines. When an EIR is certified by a non-elected decision-making body within a local lead agency (e.g. planning commission), it may be appealed to the local lead agency's elected decision-making body (i.e., City Council).

Appendix N is a sample resolution certifying an EIR. It includes statements for making findings and adopting a Statement of Overriding Considerations should the circumstances in Subsections F and H, below, exist.

F. Findings. No project shall be approved or carried out for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of the significant effects per §15091 of the Guidelines.

G. Approval. After considering the final EIR and in conjunction with making findings, the Lead Agency may decide whether or how to approve or carry out the project per §15092 of the Guidelines.

A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

1. The project as approved will not have a significant effect on the environment, or
2. The agency has:
 - a. Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and
 - b. Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

H. Statement of Overriding Considerations. When approving a project with unavoidable significant environmental impacts, the Lead and Responsible Agency shall prepare a Statement of Overriding Consideration per §15093 of the Guidelines. The Statement of Overriding Considerations is a written statement explaining why the agency is willing to accept each significant impact. The Statement of Overriding Considerations must be included in the record of project approval and must be mentioned in the Notice of Determination.

I. Notice of Determination. A Notice of Determination (NOD) shall be filed for any approved project for which an EIR was prepared within five days of the project approval. (See Appendix I.)

The NOD must be filed with the County Clerk. Failure to notice within the time constraints herein shall in no way be construed to invalidate or set aside the action taken by the body. The County Clerk Charges a fee of \$25 to file a Notice of Determination. Applicants for which an EIR is necessary will be required to deposit a check in the amount of \$25, payable to the "County of San

Luis Obispo”, with the City prior to scheduling their project for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

Fish and Game Fees, which are discussed in the Subsection 6.7, must also be submitted to the County Clerk at the same time that a Notice of Determination is filed. Applicants for which an EIR is necessary will be required to deposit a check in the appropriate amount, payable to the “County of San Luis Obispo”, with the City prior to scheduling their projects for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

If the project requires a discretionary approval from a State Agency, a copy of the Notice of Determination must also be filed with the State Clearinghouse.

J. Mitigation Monitoring or Reporting. When significant effects or potentially significant effects are identified in an EIR (or a Mitigated Negative Declaration) the City must adopt a program for reporting or monitoring mitigation measures that were adopted or made conditions of project approval per §15091(d) and §15097 of the Guidelines. The reporting or monitoring program must ensure compliance with the mitigation measures during project implementation. A sample Mitigation Monitoring and Reporting Plan appears in Appendix H.

K. Lead Agency Disposition of a Final EIR. The lead Agency shall file the final EIR with the planning agency of any city or county where significant effects may occur, include the Final EIR in any regular project report used for the project review or budgeting, retain the Final EIR as a public record for a reasonable time, and require the project applicant to provide copies of the Final EIR to Responsible Agencies per §15095 of the Guidelines.

7.9 Processing of an Addendum to an EIR

Section 15164 of the Guidelines provides that

- a. An Addendum to a previously certified EIR is prepared by a lead or responsible agency or responsible agency if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
- b. An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.
- c. An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
- d. The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
- e. A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Planning staff may distribute the addendum to an EIR to any agency or individual it feels is qualified to review the document. Although circulation of the addendum is not required, it should be accomplished if there are agencies with expertise that could provide input on its contents. Copies shall also be transmitted to members of the advisory and decision making bodies for the project, the City Manager, directors of appropriate City departments, City project staff, and the applicant.

The decision-making body is required to consider the addendum with the Final EIR before making a decision on the project. A brief explanation of the decision not to prepare a subsequent EIR should be included in the addendum, in the findings, or elsewhere in the record and it must be

supported by substantial evidence in the administrative record per §15164 of the Guidelines.

7.10 EIR Processing Checklist

Appendix O is a checklist for helping staff to ensure that all steps in the process of preparing, noticing, distributing, and completing an EIR as outlined in this Chapter are followed.

8. PREVIOUS ENVIRONMENTAL IMPACT REPORT PROCESS

8.1 Preparation of the Previous Environmental Impact Report Form

A single EIR may be used to evaluate more than one project if the projects are essentially the same in terms of environmental impacts. In such cases, planning staff shall prepare an Initial Study and complete the “Previous EIR” Form (Appendix P) in draft as soon as the Coordinator has determined that a previous environmental document is adequate (see §15153 of the Guidelines).

The Initial Study shall review the proposed project, using incorporation of the previous environmental document by reference if necessary, to determine whether that EIR would adequately describe:

1. The general environmental setting of the project;
2. The significant or potentially significant environmental effects of the project; and
3. Alternatives and mitigation measures related to each significant or potentially significant environmental effect.

8.2 Public Notice and Review

A. Public Review. Public Review of the Initial Study and Previous EIR shall be completed in the same manner set forth in Section 7.7C of these rules and procedures (§15087 of the Guidelines). The “Previous EIR” Form (Appendix P) may be used as the content of the necessary public notice. Public review of the previous EIR shall be not less than 30 days nor longer than 60 days. Where State review is required, the review period shall be not less than 45 days, unless a shorter time period is approved by the State Clearinghouse as provided for in §15105 of the Guidelines.

B. Additional Distribution. Planning staff shall provide additional notice through distribution of the Previous EIR form at the outset of the review period, to: all organizations and individuals who previously requested such notice, responsible and trustee agencies, other public agencies having jurisdiction by law, the applicant and the project file.

The materials distributed need only include the Previous EIR form.

Exceptions: (1) Planning staff may forward additional supporting information where they determine it would help in the review of the environmental determination, (2) anyone specifically requesting the supporting information shall be provided with it, (3) responsible and trustee agencies, the State Clearinghouse and San Luis Obispo County Area Coordinating Council shall receive the supporting analysis, as appropriate. NOTE: Failure to comply with these additional self-imposed requirements shall not invalidate the project approval.

C. The Coordinator may hold a public hearing on the adequacy of the previous EIR as provided by §15087(i) of the Guidelines.

8.3 Accepting the Previous EIR as Complete

A. If no comments are received during the review period, the Previous EIR shall automatically be accepted as complete.

B. The Coordinator shall respond to all comments received during the review period, and after giving them consideration, make one of the following determinations:

1. That an additional EIR should be prepared because the comments fairly argue that on the basis of substantial evidence, the previous EIR does not satisfy the criteria of §15153 of the

Guidelines, as appropriate. At this point the Coordinator shall review the initial study, previous EIR, and the comments and determine whether either an additional EIR or a supplemental or an addendum to the original EIR should be prepared. OR,

2. That a new EIR need not be prepared because the comments do not demonstrate that the criteria in §15153 of the Guidelines have not been satisfied. In this case, staff may revise the initial study based upon any comments received prior to accepting the EIR as complete.

8.4 Certification of the Previous EIR

Before approving a project for which the previous EIR was prepared, the advisory body shall review and consider, and the decision-making body shall review, consider and approve the previous EIR as adequate.

In certifying the previous EIR as adequate, if the original EIR being used makes findings as provided in sections 15091 and 15093 of the Guidelines, these same findings, as modified for the project being approved, shall have to be made and incorporated into the resolution or ordinance approving the project.

8.5 Notice of Determination

A Notice of Determination (NOD) shall be filed for any approved project for which a previous environmental document was prepared within five days of the project approval. (See Appendix I.)

The NOD must be filed with the County Clerk. Failure to notice within the time constraints herein shall in no way be construed to invalidate or set aside the action taken by the body. The County Clerk Charges a fee of \$25 to file a Notice of Determination. Applicants for which an EIR is necessary will be required to deposit a check in the amount of \$25, payable to the “County of San Luis Obispo”, with the City prior to scheduling their project for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

Fish and Game Fees, which are discussed in the Subsection 6.7, must also be submitted to the County Clerk at the same time that a Notice of Determination is filed. Applicants for which an EIR is necessary will be required to deposit a check in the appropriate amount, payable to the “County of San Luis Obispo”, with the City prior to scheduling their projects for a public hearing. The City will file the check with the County Clerk at the same time that it files the Notice of Determination.

If the project requires a discretionary approval from a State Agency, a copy of the Notice of Determination must also be filed with the State Clearinghouse.

8.6. Mitigation Monitoring or Reporting

When significant effects or potentially significant effects are identified in a previous EIR, the City must adopt a program for reporting or monitoring mitigation measures that were adopted or made conditions of project approval per §15091(d) and §15097 of the Guidelines. The reporting or monitoring program must ensure compliance with the mitigation measures during project implementation. A sample Mitigation Monitoring and Reporting Plan appears in Appendix H.

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9. PROGRAM ENVIRONMENTAL IMPACT REPORT PROCESS

9.1 General

A program EIR is one which may be prepared on a series of actions that can be characterized as one large project and meet the requirements of §15168 of the Guidelines.

9.2 Use with Later Activities

Subsequent activities that are proposed under a Program EIR must be examined to determine if an additional environmental document is necessary as set forth in §15168 (c) of the Guidelines. If no new effects could occur or no new mitigation measures are required pursuant to §15162 of the Guidelines, no new environmental document may be required. Public notice shall be given when the City proposes to approve an activity within the program and to rely on the program EIR for CEQA compliance. The notice shall be at least 20 days prior to review by the approval body and shall include a statement that the activity is within the scope of the program approved earlier and the program EIR adequately evaluates the activity for the purposes of CEQA.

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10. PROJECT REVIEW PROCESS

10.1 General

To the extent possible, continued processing activities by staff, advisory and decision making bodies, short of project approval by the decision making body, shall continue during preparation and review of environmental documents.

10.2 Public Notices

All public notices which are normally used as part of the decision making process shall note the existence of an environmental document, and shall state where the document is available for public inspection. For projects which will rely on a program EIR for CEQA compliance, notice will include statements that the activity is within the scope of the program approved earlier, and the program EIR adequately describes the activity for the purposes of CEQA (see §15168(e) of the Guidelines).

10.3 Consideration of Environmental Documents by Advisory Bodies

The role of an advisory body in the City's CEQA process is for its members to provide comments, as appropriate, to City staff during the public review period so the comments may be made part of the final environmental document to be considered by the decision making body. Significant environmental issues raised by the advisory body require the Coordinator to provide appropriate responses for their review and consideration in the final environmental document.

10.4 Consideration of Environmental Documents by Decision Making Bodies

A. General. Prior to approval or disapproval of a project, the decision making body shall review and certify the information contained in the final environmental document together with any comments received during the public review process.

B. Projects with Mitigated Negative Declarations and Negative Declarations. For projects with Mitigated Negative Declarations and Negative Declarations, the following shall apply:

1. The Draft Mitigated Negative Declaration or Negative Declarations shall be prepared and approved within 180 days after determining the application to be complete. §15107 of the Guidelines
2. Prior to approving a project, the decision-making body of the lead agency shall consider the proposed Negative Declaration or Mitigated Negative Declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed Negative Declaration or Mitigated Negative Declaration only if it finds on the basis of the whole record before it (including the Initial Study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Negative Declaration or Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis.
3. When adopting a Negative Declaration or Mitigated Negative Declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.
4. When adopting a Mitigated Negative Declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the

project or made a condition of approval to mitigate or avoid significant environmental effects.

5. The decision making body may conclude that the proposed mitigation measures or project revisions in the Mitigated Negative Declaration will not reduce potential effects to less than significant. Examples of such situations may include the following:
 - A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or
 - The decision making body determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

In such a case, the decision making body has the following options:

- a. Revise the Mitigated Negative Declaration to indentify new mitigation measures designed to reduce the effect to insignificance; or
- b. Decide to prepare an EIR.

If the decision making body chooses to revise the Mitigated Negative Declaration, the revised document must be recirculated after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073. However, per Section 15073.5 of the Guidelines, recirculation is not required if the following circumstances apply:

- a. Mitigation measures are replaced with equal or more effective measure pursuant to §15074.1 of the Guidelines;
- b. New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed mitigated negative declaration which are not new avoidable significant effects;
- c. Measures or conditions of project approval are added after circulation of the mitigated negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect;
- d. New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

C. Projects with Previous EIR. For projects with a previous EIR, the following shall apply:

1. The decision making body shall make the appropriate findings in accordance with Sections 15091 and 15093 of the Guidelines, if necessary.
2. The decision making body may conclude that the previous EIR is not adequate for the project under the criteria of the above mentioned sections of the Guidelines. In such an event, a majority of the decision making body shall also determine whether a Negative Declaration or an additional EIR shall be prepared.

E. Projects with a Final or Supplemental EIR or an Addendum to an EIR.

1. The final, supplemental or addendum to an EIR shall be completed and ready for approval and final action on the project shall occur within one year of the date the application was certified as complete.
2. The decision making body may conduct a public hearing on the Final EIR, Supplemental EIR, or Addendum to an EIR in accordance with §15087(i) concurrent with or before its hearing on the proposed project. No proposed Final EIR, Supplemental EIR, or Addendum to an EIR shall be considered for certification by a decision making body unless consideration of the document has been properly placed on the agenda of the decision making body and the public review period for the EIR has ended.
3. The decision making body shall solicit public testimony pursuant to any Final EIR, Supplemental EIR, or Addendum to an EIR on its agenda. Significant environmental issues raised during these meetings, and responses shall be added to the final, supplemental or addendum EIR prior to certification.
4. Findings
 - a. For any project with a Final EIR, Supplemental EIR, or Addendum to an EIR, the decision making body shall make the following finding as part of any resolution approving the project:

“That the final EIR (and supplement or addendum) has been completed in compliance with CEQA and the State Guidelines and the City's procedures, and the Final EIR (and supplement or addendum) was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the Final EIR (and supplement or addendum) prior to approving the project and the Final EIR (and supplement or addendum) reflects the lead agency’s independent judgment and analysis.”
 - b. The decision making body may still approve a project for which one or more significant effects have been identified upon making one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. (The findings are listed in §15091 of the Guidelines).
5. Statement of Overriding Considerations. Where the decision making body allows the occurrence of significant effects which are identified in the Final EIR or Supplemental EIR but are not mitigated, the decision making body must adopt a statement of overriding considerations in accordance with §15093 of the Guidelines. A sample Resolution adopting a Statement of Overriding Considerations is included as Appendix N.

F. Projects where impacts cannot be mitigated below a level of insignificance.

When it is determined that there will be an impact associated with a project which is not mitigable to a level of insignificance, it is not possible to approve a Negative Declaration for that project. The only provisions under which a project can be considered for approval when there are unmitigable impacts, is to proceed through the EIR process and make the required Statement of Overriding Considerations as described earlier in this section of rules and procedures.

11. PROCEDURES FOR THE CITY AS A RESPONSIBLE AGENCY

11.1 General

This section identifies the special duties of the City of Paso Robles when acting as a Responsible Agency under the provision of §15096 of the Guidelines.

11.2 Response to Consultation

The Community Development Director or his/her representative shall respond to consultation requests by a Lead Agency according to §15096(b) of the Guidelines.

11.3 Meetings

The Director or his/her representative shall attend meetings requested by the Lead Agency as provided in §15096(c) of the Guidelines.

11.4 Comments on Draft EIRs and Negative Declarations

The Director or his/her representative should review and comment on draft EIRs and Negative Declarations as provided by §15096 of the Guidelines. Where he/she feels appropriate, he/she may place the document on the agenda of the Planning Commission and/or City Council for public review and comment, or may distribute it to the members of these bodies and request their individual comments. Copies of the City's comments sent to the Lead agency will be provided to the City Manager and appropriate City departments and bodies.

11.5 Notice of Determination

This notice shall be filed in the manner provided under §15096(i) of the Guidelines.

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12. APPEAL PROCESS

12.1 General

Appeals of initial environmental determinations made by the Coordinator pursuant to Subsection 5.4 shall be in writing. An appeal of the Coordinator's determination shall be decided by the Planning Commission. The determination of the Planning Commission may be appealed to the City Council. The appeal must be filed with the Coordinator and the appeal provisions outlined below shall apply.

12.2 Appeals of Determination to Require an EIR, Supplemental EIR or EIR Addendum

A. Any person may appeal the Coordinator's decision to require an EIR for a project to the Planning Commission within ten (10) calendar days of the date written notice to the applicant that an EIR is required was mailed. Appeal of the environmental determination will be placed on the Planning Commission agenda. The decision of the Planning Commission shall be final unless within fifteen (15) calendar days the decision is appealed to the City Council.

B. The appeal of an EIR, supplement, or addendum shall state why the impacts identified by the Coordinator are, or are not, significant, how proposed mitigation measures will, or will not, prevent potential significant effects, or how the criteria of Sections 15162, 15163, or 15164 of the Guidelines are satisfied by a previous environmental document.

12.3 Other Appeals

A. Any person may request that the decision making body or affected advisory body modify the initial environmental determination made by the Coordinator.

B. An appeal request made pursuant to this section will be considered by the decision making body or affected advisory body at the same public meeting when the body considers taking action to approve, conditionally approve, or deny the project, unless the decision making body is considering the environmental determination separately from action on the project.

C. Appeals made pursuant to this section shall be submitted in writing to the Coordinator prior to the initial meeting at which the project or environmental determination will be considered by the decision making body or affected advisory body. No fee will be charged for an appeal of a decision of the Coordinator.

D. The project applicant shall be notified when the Coordinator receives an appeal pursuant to this section.

12.4 Appeals of Planning Commission Action

A. When the Planning Commission is the decision making body regarding a specific project, the Commission shall have final authority to act on the environmental determination associated with that project.

B. Appeal of the Planning Commission's action shall be made in accordance with Sections 21.23A.110 (Appeals of Planning Commission decisions) and §21.23A.120 (Application for appeal to the City Council) of the Zoning Code. Any such appeal must be made in writing to the Community Development Department of the City of Paso Robles within fifteen (15) calendar days from the date of the Planning Commission's formal action, along with the appropriate fees as determined by the City Council.

C. The project applicant shall be notified when the Community Development Department receives an appeal pursuant to this section.

D. The Director shall forward the appeal to the City Clerk's office who will then schedule the appeal for City Council review and public hearing.

E. The City Council shall consider the information contained in the environmental documents associated with the project, along with public testimony. If the Council acts to approve a Negative Declaration, or Certify a Final EIR or Supplemental EIR, the Council must make the required findings contained in Sections 15074 and 15090 of the Guidelines.

13. MITIGATION MONITORING

13.1 General

As noted in §15097 of the Guidelines, a Mitigation Monitoring Program shall be prepared and adopted whenever a Mitigated Negative Declaration or EIR is prepared. The purposes of a Mitigation Monitoring Program are to: (a) ensure that required mitigation measures are implemented; (b) allow the City and interested citizens to verify compliance before, during and after project construction; (c) generate information on the effectiveness of mitigation measures, to improve their effectiveness in future applications, and (d) guide future decision making.

13.2 Applicability

Mitigation monitoring shall be required for all non-exempt discretionary projects for which mitigation measures have been identified through a Mitigated Negative Declaration, EIR, supplement to an EIR, or EIR addendum.

13.3 Procedures

A. Mitigation Monitoring Checklist. After a non-exempt discretionary project is approved with conditions of approval which include mitigation measures identified through a Mitigated Negative Declaration, EIR or supplement, these mitigation measures shall be incorporated into a checklist as shown in Appendix H. Each measure will be identified separately on the checklist, with various spaces for monitoring the progress and effectiveness of each measure as it is implemented. This checklist is the basis of the monitoring program and a copy shall be distributed to all City departments which have supplied mitigation measures for their use in monitoring.

B. Monitoring Program. In most cases, mitigation measures can be monitored through the City's plan check process. Therefore, when an approved project with mitigation measures is submitted for plan check through the City, each plan checker will have a copy of the monitoring checklist. As each plan checker review the plans, the plans will be checked for compliance with each mitigation measure.

1. **Project Design Mitigation Measures (Project Specific).** A project design mitigation measure is one that is to be incorporated into project design to mitigate an impact, such as the provision of a retention basin or acoustical barrier. These mitigation measures will normally be shown on the building plans. These plans will be reviewed for each specific mitigation measure, and as each mitigation measure is shown, it will be noted on the form (Appendix H) and signed off. If a mitigation measure is not shown, the plans will be sent back for corrections. **Plans will not be approved until each project design mitigation measure has been incorporated into the project design.** After the plans are approved, and before final inspection of the building for occupancy, the project proponent shall submit proof that each mitigation measure shown on the plans has been installed or incorporated into the constructed project. Verification of compliance will then be noted on the monitoring form and signed off, thereby completing the process for a particular mitigation measure.
2. **Ongoing Mitigation Measure (Project Specific).** An ongoing mitigation measure is one that is associated with the project over a period of time, such as dust control or maintenance of landscaping. Monitoring this type of mitigation measure will be similar to that of a

project specific mitigation measure noted above, except that the status of each mitigation measure will be noted at various times until no longer needed. An example would be hydroseeding until a project is constructed. The project proponent may be required to submit periodic reports on the status of these types of mitigation measures.

C. Outside Consultants. For the few cases in which compliance with a mitigation measure cannot be verified through the plan check process, or requires specialized expertise, an outside consultant may be hired. The City will hire the consultant and may collect a deposit from the project proponent for the consultant services.

D. Other Agencies. It will be the responsibility of other agencies to monitor mitigation measures requested by these other agencies. The City shall notify these agencies of what mitigation measures of theirs has been included in the project approval, and these agencies shall submit a proposed program to the City which outlines their proposed monitoring program. These agencies shall inform the City in writing when each of their mitigation measures has been complied with.

E. Completed Mitigation Monitoring Checklists. Completed mitigation monitoring forms shall be retained in the project file, and will be available for public review upon proper request.

F. Mitigation Monitoring Program Fees.

1. **Processing Fees.** The Director may charge and collect from the proponent of any proposed project a fee in the amount of the actual cost to the City for monitoring all mitigation measures for a project as described in this Chapter. A deposit may be required by the Director to be applied towards this fee. Any unused portion of the deposit will be refunded.
2. **Consultant Fees.** The cost associated with the use of outside consultants shall be paid for by the project proponent. A deposit may be required by the Director to be applied towards the consultant services. Any unused portion of the deposit will be refunded.