

***Richmond***

**CITY OF RICHMOND  
GUIDELINES AND PROCEDURES  
FOR THE IMPLEMENTATION OF THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT**

**ADOPTED MARCH 16, 2021**

**Resolution No. 31-21**

**Replacing Resolution Nos. 125-03 and 63-96**

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# CITY OF RICHMOND CEQA GUIDELINES

## Section 1: Introduction, history, authority, consistency, applicability, scope and revisions

### 1.1 INTRODUCTION

The State of California has adopted the California Environmental Quality Act (CEQA) in order to:

- Maintain a quality environment now and in the future
- Provide a high-quality environment that is healthful and pleasing
- Clarify the relationship between a high-quality ecological system and the general welfare of the people of the state
- Identify critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent those thresholds from being reached
- Make it clear that every citizen has a responsibility to contribute to the preservation and enhancement of the environment
- Inform government decision makers and the public about the potential, significant environmental effects of proposed activities;
- Identify the ways that environmental damage can be avoided or significantly reduced;
- 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; and
- 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.

### 1.2 HISTORY

- Congress adopted the National Environmental Policy Act (NEPA) in 1969.
- The California Legislature adopted the California Environmental Quality Act (CEQA) to create environmental regulations tailored to the needs of California in 1970.
- CEQA is codified in Sections 21000 through 21178 of the Public Resources Code.
- The CEQA Guidelines were prepared to provide guidelines for implementing CEQA and are codified in Sections 15000 through 15387 of the California code of Regulations, Division 6, Title 14, Chapter 3.
- Section 21082 of CEQA requires the City of Richmond to adopt "objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division."

- Section 15022 of the Guidelines requires the City of Richmond to adopt "objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents" and sets forth detailed requirements.

### **1.3 AUTHORITY**

These Guidelines are adopted by Resolution No.1<sup>-2</sup>-5-03 of the Richmond City Council to:

- Implement Section 21082 of the Public Resources Code hereinafter referred to as the California Environmental Quality Act of 1970, or "CEQA".
- Implement Section 15022 of the CEQA Guidelines.

### **1.4 CONSISTENCY**

These rules and procedures are consistent with, and are intended to supplement, the Guidelines to CEQA (Division 6, Title 14, Section 15000 et. seq. of the California Code of Regulations). The Guidelines are hereby incorporated by reference; a copy of the Guidelines is on file in the Richmond Planning Department. These rules and procedures are intended to tailor the general provisions of the Guidelines to the activities of the City of Richmond. 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.

### **1.5 APPLICABILITY**

CEQA applies to actions ("projects") subject to discretionary approval and with the potential to result in a direct or indirect physical change to the environment, including:

- Activities directly undertaken by a governmental agency,
- Activities financed in whole or in part by a governmental agency,
- Private activities which require one or several discretionary approvals from a government agency.

### **1.6 SCOPE**

These rules and procedures shall apply to the City of Richmond and all departments, agencies, and districts governed by the City Council of the City of Richmond. The requirements of these rules and procedures shall apply to all projects, both public and private, subject to city discretionary approval.

## 1.7 REVISIONS

The Planning Director may, from time to time, revise these rules and procedures when the Director determines that such revisions are necessitated by amendments to CEQA and the State Guidelines or when the revisions are essentially technical in their nature, and conform to CEQA and the State Guidelines. All other revisions, such as changes to accommodate the goals and objectives of the City Council, shall be approved by the City Council.

### Section 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.

**Approval:** The decision by a public agency such as the City Council, a city agency or city advisory body which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary permit, contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

**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 legislative approvals of the City Council. The Design Review Board is the advisory body to the Planning Commission.

**Categorical Exemptions:** 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.

**City:** City means the City of Richmond which includes all departments, commissions, boards, the City Council and the Redevelopment Agency.

**Council:** Council means the City Council of the City of Richmond.

**County Clerk:** County Clerk is the County Clerk for Contra Costa County.

**Decision-Making Body:** The decision-making body shall be only the City Council or the Planning Commission for the purposes of these Guidelines.

**Department:** Department means any agency of the City of Richmond, any division of any agency, any department of the City of Richmond not included in one of its agencies, or any special district governed by the City of Richmond City Council.

**Discretionary Project:** 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. Examples include: general plan amendments, rezonings, variances, conditional use permits, tentative subdivision maps, and parcel maps.

**Guidelines:** Guidelines means the State Guidelines for the Implementation of the California Environmental Quality Act (Division 6, Title 14, Section 15000 et. seq. of the California Code of Regulations).

**Lead Agency:** The public agency that has the principal responsibility for carrying out or approving a project. The lead Agency will decide whether an EIR or a Negative Declaration will be prepared for a project and will cause the document to be prepared.

**Ministerial:** 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. Examples of ministerial decisions are:

- Issuance of building, plumbing or electrical permits.
- Issuance of business licenses.
- Approval of final subdivision maps.
- Approval of individual utility service connections and disconnections.
- All code compliance and zoning determination reviews.
- Issuance of encroachment permits.
- Development of Accessory Dwelling Units (ADUs)

**Mitigation:** Mitigation includes:

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

**Planning Commission:** Planning Commission means a commission appointed by the Mayor subject to City Council confirmation to make recommendations and take actions concerning the City of Richmond.

**Planning Department:** The Planning Department of the City of Richmond. The environmental review process is initiated and implemented by the Planning Department.

The environmental review is completed by staff and is then reviewed and considered by the City Council or Planning Commission.

**Planning Director:** Planning Director means the director of the Planning Department for the City of Richmond or the Director's designee.

**Project:** The whole of an action that 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:

- 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 General Plans or elements thereof.
- An activity undertaken by a person that is supported in whole or in part through public agency contracts, grants, subsidies, loans or other forms of public assistance from one or more public agencies.
- 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.

**Responsible Agency:** A responsible agency is a public agency other than the Lead Agency which has discretionary approval power over a project.

**Significant Effect on the Environment:** A substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including, land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

**Streamlining:** Shortening the project approval process for eligible projects by exempting them from the CEQA process or limiting the topics subject to environmental review.

**Substantial Evidence:** Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts that do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

**Staff Planner:** The staff planner, who makes determinations and recommendations on the potential environmental impacts of projects and who manages the environmental

review process for project applications assigned by the Planning Director.

**Trustee Agency:** 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 relevant to the City of Richmond include, among others, the Department of Fish and Game and the State Department of Parks and Recreation.

### **Section 3: Application Procedures**

#### **3.1 CEQA PROCESS SUMMARY (§15002(K))**

The Environmental Review Process consists of three basic steps:

1. Lead Agency examines the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any further. The Agency may prepare a Notice of Exemption.
2. If the project is not exempt, the Lead Agency conducts an Initial Study to determine whether the project may have a significant effect on the environment. If the Initial Study shows that there is no substantial evidence that the project may have a significant effect, the Lead Agency prepares a Negative Declaration or Mitigated Negative Declaration.
3. If the Initial Study shows that the project may have a significant effect, the Lead Agency prepares an Environmental Impact Report.

#### **3.2 PRE-APPLICATION PROCESS**

Staff will meet with applicants to discuss potential development projects before a formal application is submitted. If more than five staff hours are required for this process, the applicant will be required to submit a deposit, as determined by the

Planning Director pursuant to the City's cost recovery procedures, to defray the costs of the pre-application process. During this process, if the Planning Director or staff planner determines that the proposed project would have potentially significant effects on the environment the Director shall direct that studies be undertaken to determine the significance of those impacts. This process will ensure that potential impacts are determined at the earliest date and that the environmental review process will be conducted in a timely manner.

#### **3.3 DETERMINING IF APPLICATIONS ARE COMPLETE**

**30-Day Time Limit.** A Lead Agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR (or MND) or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the Lead Agency to require the applicant to submit additional information needed for

environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application. (§15060(a))

Checklist. Once a project application has been submitted, it will be checked to determine if it contains the required information prior to acceptance by the Planning Department. A checklist of required items for each type of application is available at the Planning Department. It is the responsibility of the applicant to ensure that all required information is provided. Projects shall not be deemed received for processing until an application requesting approval for the project is accepted as complete by the staff planner. The process for establishing completeness is:

**A. Complete Applications.** When the staff planner determines that an application is complete, the applicant shall be notified in writing, within 20 days of the submittal. The staff planner will make reasonable efforts to complete an initial review of application completeness and notify the applicant of project status with a Letter of Completeness within ten days of the application submittal date.

**B. Incomplete Applications.** When the staff planner determines that an application is incomplete, the applicant shall be notified in writing, within 20 days of the submittal with a Letter of Incompleteness, specifying the areas which were found to be incomplete, and what is needed to complete the application.

**C. Complete Resubmitted Applications.** When the staff planner determines that a formerly incomplete application that has been resubmitted is **complete**, the applicant shall be notified in writing with a Letter of Completeness, within 20 days of the submittal.

### 3.4 DETERMINING IF THE PROJECT IS SUBJECT TO CEQA

The Planner should determine if the project is an activity that is:

- Being approved and is subject to one or more discretionary governmental approvals.
- Involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies.
- Directly undertaken by a public agency such as 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 General Plans or elements thereof.
- Undertaken by a person that is supported in whole or in part through public agency contracts, grants, subsidies, loans or other forms of public assistance.

**Determination.** If a project does not meet the above criteria, and/or is clearly a ministerial act, it is not subject to CEQA. If a project does meet the above criteria, processing should continue pursuant to CEQA.

## Section 4: Exemption Process

#### 4.1 EXEMPTION DETERMINATION

**Exempt.** After the staff planner has determined that a project is complete and pursuant to CEQA, the staff planner will complete an initial review of application exemption status and notify the applicant of project status within seven (7) days of the determination that the application is complete. The planner will evaluate the project to determine if the following apply to the project:

**A. Common Sense Exemptions (projects with no possibility of significant effect, per Section 15061.b.3).** This determination shall be based on Planning staff's judgment as to whether it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and shall be made in accordance with the provisions of the **Guidelines**.

**B. Statutory Exemptions.** See Article 18 (Sections 15260 - 15285).

**C. Categorical Exemptions.** See Article 19 (Sections 15300 - 15333).

**D. Residential projects undertaken pursuant to a specific plan** which meet the requirements of Section 15182 of the Guidelines.

**E. Small Infill Exemption.** See Section 15332

**F. ADU Exemption,** See Section 15268 of the Guidelines and PRC Section 21080(b)(1)

**G. Affordable Housing Exemption.** See CCR Section 15194(b)-(d)

**H. Residential Consistent with Specific Plan Exemption.** See CCR Section 65457

**I. Specific Plan Exemption.** See CCR Section 21155.4(2)

**J. Community Plan Exemption.** See PRC Section 21083.3

**K. Infill Project Exemption.** Section 15183.3

**L. Transit Priority Project Exemption.** See PRC Section 21155.1

**Determination.** If any of the above applies to the project, the planner shall determine that the project is exempt from CEQA and continue processing the project in anticipation of filing a Notice of Exemption after approval. If none of the above applies to the project the planner shall continue processing the project pursuant to CEQA.

**Preparation of Initial Study even if exempt.** If the staff planner determines that an activity or type of project listed below may have a significant effect on the environment, regardless of whether or not the project may qualify for an exemption under the Guidelines, he/she will prepare an Initial Study under the provisions of Section 5 of these regulations. In the event the project may qualify for an exemption, but it is found that mitigation measures will be necessary to comply with the Guidelines, the applicant may agree (by formal written and authorized acknowledgement) to implement certain mitigation measures.

## **4.2 FILING OF A NOTICE OF EXEMPTION**

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

**A. Public projects.** The staff planner may file a Notice of Exemption in accordance with Section 15061 (d) of the Guidelines within 10 working days of the project's approval. Any filing fees shall be paid by the sponsoring public agency. The State encourages the City to post notices in electronic form on its website.

**B. Private Projects.** The staff planner will not file a Notice of Exemption for private projects, but forms will be available at the Planning Department and the applicant should be encouraged to do so to shorten the statutory challenge period provided in CEQA, Section 15062 (d): If the Notice of Exemption is filed with the County Clerk, a 35 day statute of limitations period on challenges is allowed; if a Notice is not filed, the statute of limitations is 180 days. Any filing fees shall be paid by the project applicant. The State encourages the City to post notices in electronic form on its website.

## **Section 5:Initial Study Procedures**

An Initial Study is a preliminary analysis prepared by the Lead Agency to determine the appropriate level of environmental review for a project: either a Negative Declaration (ND) or an Environmental Impact Report (EIR).

### **5.1 HIRE CONSULTANT**

If the conduct of the Initial Study will involve complex studies or unusual technical background(s), the staff planner shall hire a consultant or consultants to prepare the Initial Study. The cost of the consultant services shall be borne by the applicant and paid for out of the account maintained by the City for this project pursuant to the City's cost recovery program.

### **5.2 CONDUCT OF THE INITIAL STUDY**

An Initial Study shall be prepared for all public and private projects, to determine if the project may have a significant effect on the environment, which are not exempt from CEQA according to Section 4 of these Guidelines, unless it has been determined by the staff planner that an EIR will be required and the applicant agrees. All initial studies shall be conducted in accordance with Section 15063 of the Guidelines and should be completed within 20 days upon determination of application completeness.

### **5.3 CONSULTATION**

The staff planner must consult with and solicit recommendations from all responsible and trustee agencies (see Sections 15063 (g) and 15083 of the Guidelines), and City

Departments. Appendix B lists agencies with special expertise in various subject areas that 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. The comments and recommendations of the responsible or trustee agency and City Departments shall be reflected in the Initial Study.

#### 5.4 EVALUATING PROJECTS

**A. Initial Study Checklist.** Planning staff shall evaluate projects for their effect on the environment by using the Initial Study Checklist (refer to Appendix C) and by calling upon various sources of information, including the general plan, specific plans, previously completed EIR's and other environmental studies.

1. **Projects with no previous environmental documents.** For projects with no previous environmental documents, or previously prepared documents found to be inadequate because changes have been made to the project or project setting, the analysis shall focus on the identification of significant effects according to Sections 15064, 15064.5 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. **Projects with previous environmental documents.** For projects with previous environmental documents, the analysis shall focus upon the criteria contained in Sections 15162, 15163, 15164, 15182, and 15183 of the Guidelines which describe the procedures to follow if there have been substantial changes in the project or project setting since the original environmental documents were prepared.

**B. Archaeological/historical study.** For projects subject to archaeological/historical study, the applicant shall submit to the Planning Department, in conjunction with the project application, an archaeological/historical survey report and conform to the requirements of Section 15064.5.

**C. Transportation Impact Analysis.** For projects that could substantially increase vehicle trips, the applicant shall submit a Transportation Impact Analysis (TIA) that uses Vehicle Miles Traveled (VMT) as the primarily metric to assess the transportation impacts of the project, per the Senate Bill 375 and Sections 15064.3 For determining whether a project's vehicle trips would constitute a substantial increase, the City of Richmond will apply the Contra Costa County Transportation Analysis Guidelines.

**D. Greenhouse Gas Modeling.** Per Section 15064.4, the applicant shall complete a "good faith" effort using scientific techniques to calculate the amount of greenhouse gases resulting from the project. The analysis should focus on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change.

**E. Native American Consultation.** The City shall assess the potential for the project to disturb Tribal Cultural Resources (PRC 21074 (a)(1)(A)-(B)). Per Assembly Bill 52, staff shall provide written notification of the CEQA process to all Native American Tribes on the City's Tribal notice list within 14 days of a decision to undertake a project or determination that a project application is complete, Notification letters shall offer the opportunity to consult on the environmental review process. **Outside review.** If additional outside review is required to determine the potential significant effects of a project, (e.g., a study of potential transportation impacts) it shall be accomplished by consultants selected from the City's list of certified consultants under the supervision of the staff planner. Any fees for this outside study shall be borne by the applicant pursuant to the City's cost recovery program.

**F. Transmit completed Initial Study to applicant.** Upon completion of the Initial Study, the staff planner shall transmit it along with their preliminary determination to the applicant. 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 additional studies shall be required.

**G. Meet with applicant.** After a preliminary determination that a project may have a significant effect on the environment, the staff planner 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 staff planner 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.

**H. Determination.** The staff planner, on the basis of the environmental analysis, other information contained in the Initial Study and substantial evidence in the public record, shall make one of the following preliminary determinations outlined below within 20 days, but, 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 the Planning Director and the project applicant as provided in Section 15102 of the Guidelines):

1. If there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment, the lead agency shall prepare:
  - a. A **Negative Declaration**, where there is no possibility that the proposed project may have a significant effect on the environment (proceed to Section 6, Negative Declaration process) OR
  - b. A **Mitigated Negative Declaration**, where it can be shown that, although the proposed project could have a significant effect on the environment, there will not be a significant effect, in this case, because revisions in the project plans made by or agreed to by the applicant and/or mitigation measures have been incorporated into the project

would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the City that the project, as revised, may have a significant effect on the environment then a mitigated Negative Declaration shall be prepared (proceed to Section 6, Negative Declaration Process). This determination should be made in cases where the mitigation measures are readily apparent and can be agreed to by the staff planner and the applicant. The City shall prepare a Reporting and Monitoring Program pursuant to Section 21081.6 of the Public Resources Code for any mitigation measures incorporated into the project to ensure compliance, as set forth in Section 12 of these guidelines.

2. If there is substantial evidence that any aspect, either individually or cumulatively, may cause a significant effect on the environment, the lead agency shall:
  - a. Prepare an **Environmental Impact Report** because the project may have a significant effect on the environment, pursuant to section 15064 of the Guidelines. Proceed to Section 7 of these rules and procedures;
  - b. Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, because pursuant to Section 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 Section 7 of these rules and procedures; or
  - c. Determine, pursuant to a Program EIR, tiering, or another appropriate process, which of a project's effects was adequately examined by an earlier EIR or negative declaration or whether to use a Master EIR.

**I. Mandatory Findings of Significance.** The City shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

1. The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.
2. The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
3. The project has possible environmental effects which are individually

limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects as defined in Section 15130.

4. The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

## **5.5 NOTIFY APPLICANT OF DETERMINATION OF THE PLANNING DIRECTOR.**

As soon as the staff planner, in consultation with the Planning Director, has determined that a Negative Declaration, Mitigated Negative Declaration, EIR, Addendum, Subsequent, supplement, Staged, Program or Master EIR is required, the staff planner shall notify the applicant in writing. A copy of the Initial Study, if one was prepared, and a preliminary request for any additional information needed for the preparation of the EIR (if appropriate) shall also be forwarded to the applicant.

## **Section 6: Negative Declaration Process**

A Negative Declaration is a written statement by the Lead Agency briefly describing reasons that a proposed project will not have a significant adverse effect on the environment and therefore does not require the preparation of an EIR.

### **6.1 PREPARATION OF A DRAFT NEGATIVE DECLARATION**

As soon as the staff planner determines that a project will not have a significant effect on the environment, planning staff shall prepare a Draft Negative Declaration (Appendix D) in accordance with Section 15071 of the Guidelines.

### **6.2 REVISIONS TO PROJECT REQUIRE REVISIONS TO NEGATIVE DECLARATION**

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 Section 15070 (b)(1) of the Guidelines.

### **6.3 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION (NOI)**

- A. Public Review Period.** The City shall publish a NOI to provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed Negative Declaration or Mitigated Negative Declaration and Initial Study are submitted to the State Clearinghouse for review by state agencies, the public

review period shall not be less than **30** days (or as long as the review period established by the State Clearinghouse), unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

**B. NOI contents.** The NOI should contain the following:

1. **Description.** A brief description of the proposed project.
2. **Starting and ending dates for the review period.** The starting and ending dates for the review period during which the City will receive comments on the proposed Negative Declaration or Mitigated Negative Declaration.
3. **Date, time, and place of any scheduled public meetings.** The date, time, and place of any scheduled public meetings or hearings to be held by the City on the proposed project.
4. **Where available for review.** The address or addresses where copies of the proposed negative declaration or Mitigated Negative Declaration including the revisions developed under Section 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 City's normal working hours.
5. **Hazardous waste sites.** If the project site is on any of the lists shown under Section 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 subsection (f) of that section.
6. **Other information.** Other information specifically required by statute or regulation for a particular project or type of project.

**C. Recipients of Notice of Intent.** The City shall mail a Notice of Intent (NOI) to adopt a negative declaration or mitigated negative declaration to:

1. **All organizations and individuals who have previously requested the notice** in writing and by **all** of the following:
  - a. Publication at least one time by the City in a newspaper of general circulation in the area affected by the proposed project.
  - b. Posting of notice by the City on and off the site in the area where the project is to be located.
  - c. Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is based. Owners of such property shall be identified as shown on the latest equalized assessment roll.
  - d. Posting on the Planning Department's website.
2. **Responsible agencies** (including a copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study).

3. **Trustee agencies** (including a copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study)
4. **Every other public agency with jurisdiction by law** over resources affected by the project (including a copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study).
5. **The State Clearinghouse** where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance (see Sections 15206 and 15207 of the Guidelines) (including a copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study). Staff should consult the State Clearinghouse website or contact State Clearinghouse staff for applicable submittal requirements.
6. **The Association of Bay Area Governments (ABAG)** where the project is of statewide, regional, or areawide environmental significance (including a copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study).
7. **Commenting agencies.** Any public agency which has commented on a proposed Negative Declaration or Mitigated Negative Declaration.
8. **Person requesting a copy.** Any person requesting a copy of the NOI and the Negative Declaration, Mitigated Negative Declaration or Initial Study.
9. **Richmond Neighborhood Coordinating Council** and the neighborhood council in which the project is located.
10. **Main Richmond Public Library** and the library nearest the project.
11. **Planning Department.**
12. **County Clerk.**

**D. Public Hearings.** The Planning Director may hold a public hearing on the Draft Negative Declaration as provided by Section 15202 of the Guidelines, for the purpose of gaining public input for the public record.

#### **6.4 COMPLETING THE NEGATIVE DECLARATION**

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

**B. Comments received.** If comments are received; the Planning Director shall, within 30 calendar days of the close of the review period, review the comments and after giving them consideration, make one of the following determinations:

1. **EIR.** 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. **Negative Declaration.** That the Negative Declaration should be accepted as complete because the comments do not provide the basis for requiring an EIR, as outlined above, or recirculation as outlined below. The Planning Director may, however, revise the Negative Declaration and Initial Study in response to comments received (not substantial revisions), before accepting it as complete. The City may use the response to comment format to clarify the reasons for accepting the Negative Declaration as complete OR
  3. **Recirculate Negative Declaration.** If, during the 20-day public review period, the Negative Declaration is found to require substantial revisions, including significant revisions to the project description and new avoidable significant impacts requiring new mitigation measures, the document must be recirculated for a second public review period, pursuant to Section 15073.5
  - 4.

NOTE: The Negative Declaration must be completed and approved within 180 days from the date the application was determined to be complete. (Section 15107)

**C. Notify applicant.** The Planning Director shall notify the applicant of the determination to either: require an EIR, accept the Negative Declaration as complete or recirculate the Negative Declaration.

## **6.5 APPROVAL OF THE NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.**

The decision-making body shall be only the City Council or Planning Commission for the purposes of these Guidelines. Before approving a project for which a Negative Declaration or Mitigated Negative Declaration (and associated Mitigation Monitoring Program) has been prepared, the final decision-making body shall review and consider and adopt or deny the Negative Declaration or Mitigated Negative Declaration. Where a conflict arises between advisory and/or the decision-making bodies regarding the Negative Declaration or Mitigated Negative Declaration, the Negative Declaration or Mitigated Negative Declaration shall be referred to the City Council for final determination.

## **6.6 APPEAL**

An appeal of this decision may be filed pursuant to Section 11 of these Guidelines.



## **6.7 TIMELY COMPLIANCE**

A Negative Declaration shall be completed and adopted not more than 180 calendar days after an application has been accepted as complete (Section 15107), except in the following instances and as allowed by law:

1. The time period has been suspended because of unreasonable delay caused by the applicant (Section 15109).
2. Where a project is subject to the National Environmental Policy Act (NEPA) (Section 15110).
3. Where the project requires approval of other applications not subject to statutory deadlines such as annexations and sphere of influence amendments (Section 15110).
4. When the applicant requests a time extension pursuant to Section 21100.2 and 21151.5 of the Public Resources Code, an extension may be granted for a maximum of six months after an application is deemed complete. The applicant may in this case, and under certain circumstances, request a waiver of the 180 day time period for a Negative Declaration or the one year time limit for an EIR (see Section 15110 of the Guidelines which deals with projects for which a combined EIR and EIS are required).

## **6.8 NOTICE OF DETERMINATION.**

After the decision-making body has made a decision to carry out a project for which a Negative Declaration, Mitigated Negative Declaration, EIR, Supplemental EIR, Subsequent EIR or an Addendum to an EIR (if significant) or previous EIR has been approved or certified, the staff planner shall, as soon as possible but no later than 5 calendar days following approval of the project, prepare a Notice of Determination (Appendix E) in accordance with Section 15075 or 15094 of the guidelines. Staff shall file the NOD with the county clerk for all projects proposed by the City. The applicant shall be responsible for filing his/her NOD with the County Clerk. The applicant shall be responsible for paying all filing fees, including Department of Fish and Wildlife fees if applicable, at the time the notice is filed. The project will not be operative, vested or final until the filing of the Notice of Determination with the county clerk. If the project requires a discretionary approval from any state agency the City will also file the NOD with the Office of Planning and Research (OPR) in the State Clearinghouse. The State encourages the City to post notices in electronic form on its website.

## **Section 7: Environmental Impact Report Process**

### **7.1 HIRE CONSULTANT**

The staff planner shall hire a consultant or consultants to prepare the EIR (if it has not already occurred). The cost of the consultant services shall be borne by the applicant and paid for out of the account maintained by the City for this project pursuant to the

City's cost recovery program.

## 7.2 NOTICE OF PREPARATION

At the time it is determined that an EIR is required, the staff planner shall complete and distribute a Notice of Preparation (Appendix F) to OPR, trustee and responsible agencies, any federal agencies involved in approving or funding the project, City departments and nearby cities and counties (if affected by the project) and begin consultations with the applicant and qualified consultants as provided by Sections 15082 of the Guidelines.

**A. Contents.** The NOP should contain the following:

1. Description of the project.
2. Location of the project.
3. Possible environmental effects of the project.

**B. Notice.** Notice shall be sent by certified mail.

**C. Response to Notice of Preparation.** Within 30 days after receiving the notice of preparation each trustee agency, responsible agency, applicable federal agency, City Department and nearby city or county will provide the City with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the Draft EIR. The response should identify:

1. Significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the Draft EIR.
2. Whether the agency will be a responsible agency or trustee agency for the project.

**D. If no comments are received.** If the recipients of the Notice of Preparation fail by the end of the 30-day period to provide the City with either a response to the notice or a well-justified request for additional time, the City may presume that the recipients have no response to make.

**E. Meetings.** The City, a responsible agency, a trustee agency or the applicant may request one or more meetings to assist the City in determining the scope and content of the environmental information which the responsible agency or trustee agency may require. Such meetings shall be convened by the City within 30 days after the meetings were requested.

**F. State Clearinghouse.** When one or more state agencies will be a responsible agency or trustee agency, the City shall send a NOP to the State Clearinghouse in OPR. OPR will then assign an identification number to the EIR.

## 7.3 SCOPE OF EIR

Based on the results of the Initial Study, information received in response to the Notice of Preparation, and/or other review of the project, the staff planner, under consultation of the Planning Director, shall determine the scope of the EIR. Prior to completing the Draft EIR, a meeting may also be held with responsible agencies, trustee agencies, persons concerned with the environmental effects of the project, other persons identified in Section 15086 of the State Guidelines, and/or representatives from other City departments to determine the scope of the EIR. The scope shall include a listing of all technical reports (transportation, noise, biology, and so forth) as well as any other special analyses that will be required. The scope should be written in a narrative rather than a checklist format to make it clear and easy to understand. See Appendix H for types of Environmental Impact Reports.

#### **7.4 PREPARATION OF THE DRAFT, SUBSEQUENT OR SUPPLEMENTAL EIR OR ADDENDUM TO AN EIR**

- A. Consultant prepares EIR.** The consultant shall prepare the EIR in consultation with the project planner and with Responsible and Trustee agencies.
- 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 contracting with the consultant to prepare the EIR, the applicant shall deposit funds in a City account pursuant to the City's cost recovery procedures sufficient to pay for the required EIR. These funds shall be released by the City to the EIR consultant according to the cost recovery process of the City. The applicant shall also be required to pay the hourly costs for any additional staff time required to review the document from the funds in the account maintained by the City for this project.
- C. Contents and Format.** The EIR shall contain all of the elements specified in Sections 15120 through 15132 of the Guidelines for Draft EIRs and/or Sections 15160 to 15179.5 of the Guidelines for Subsequent, Supplemental, Addendum, Staged, Program and Master EIRs and any additional information required by the City. The EIR may also contain additional studies and/or requirements as noted in the initial environmental study that is pertinent to the project. In some cases, the EIR may be limited to focused items, also as identified in the Initial Study (refer to Section 5 of these guidelines).
- D. Consultant interaction with applicant.** During the preparation of the environmental impact report, the City's consultant should be allowed free access to the applicant, provided that the staff planner shall be notified ahead of time of any meetings between the applicant and the consultant, and that no meeting be held without the knowledge and consent of the staff planner. No information or conclusions should be released by the consultant to the applicant prior to notification to, and approval of, the staff planner of such information.

## 7.5 PROCESSING THE DRAFT EIR (INCLUDING SUBSEQUENT AND SUPPLEMENTS)

- A. Screencheck Draft EIR.** The consultant preparing the Draft EIR shall submit a Screencheck Draft EIR for review by the staff planner within the time allowed by the EIR contract. The consultant shall revise the Screencheck Draft EIR and shall generally submit the Draft EIR within two weeks of receipt of comments from staff.
- B. Notice of Completion (also Notice of Availability (NOA)).** As soon as the staff planner, under consultation with the Planning Director, determines that the Draft EIR is properly completed, and is appropriate for distribution and processing, the EIR consultant shall complete a Notice of Completion and file it with the Office of Planning Research (OPR) in accordance with Section 15085 of the Guidelines (refer to Appendix G) and shall submit a copy to the Applicant.
- C. Public Notice.** Planning staff shall provide public notice of the completion of the Draft EIR in accordance with Section 15087 of the Guidelines at the same time the Notice of Completion is filed. CEQA provides that 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 mailed to all organizations and individuals who have previously requested such notice in writing and by all of the following procedures:
1. Publication at least once in a newspaper of general circulation in the area affected by the proposed project.
  2. Posting on the City Hall bulletin board and on the project site.
  3. Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is based. Owners of such property shall be identified as shown on the latest equalized assessment roll.
  4. Posting on the Planning Department's website.
- D. Distribution.** The staff planner shall distribute, as provided in Sections 15086 of the Guidelines and below, the Draft EIR when complete, and request written comments during the review period:
1. Where a project is of statewide, regional or area wide significance according to Section 15206 of the Guidelines, the Draft EIR shall be sent to the State Clearinghouse and Association of Bay Area Governments (ABAG).
  2. Draft EIRs prepared for a general plan, general plan element, or amendment, and EIRs prepared pursuant to the National Environmental Policy Act shall be distributed to the State Clearinghouse.
  3. Distribution to the State Clearinghouse where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance (see Sections 15206 and 15207 of the Guidelines) (including a

copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study). Staff should consult the State Clearinghouse website or contact State Clearinghouse staff for applicable submittal requirements.

4. Copies shall also be distributed to members of the advisory and decision-making bodies for the project, affected neighborhood councils, any organizations or individuals who have filed a written request to receive a copy of the DEIR, the City Manager, City project staff, other appropriate staff and the applicant.
5. Copies of the DEIR shall be made available for review at the main Richmond library and at the library nearest the project, and at the Planning Department where loan copies shall be available. Any person wanting a copy of the DEIR other than those to whom they have been distributed shall be charged a fee not to exceed the actual cost of reproduction.

**E. Review.** The review period shall begin following the distribution of Public Notices and DEIR documents by the staff planner and shall be not less than 30 days nor longer than 90 days. If a state agency is the Lead Agency or a Responsible Agency, the review period for a Draft EIR shall be not less than 45 days unless the State Clearinghouse approves a shorter time period.

**F. Public Meetings.** The City may hold public meetings to receive input on the Draft EIR.

**G. Evaluation of Comments and Preparation of Responses.** As comments are received, the staff planner and/or EIR consultant, in consultation with the Planning Director, shall evaluate the comments and have responses prepared. The EIR consultant under advisement of the staff planner and/or Planning Director may prepare such responses. Responses to comments shall be sent to the commenters at the end of the public review period. Comments and responses to comments shall be included in the Final EIR as per Sections 15088 and 15132 of the Guidelines. Such responses to comments should fully address comments and questions and make reference to the EIR where appropriate. If significant new information is added to the EIR, the EIR shall be recirculated as required by Section 15088.5 of CEQA.

## **7.6 PREPARATION AND PROCESSING OF THE FINAL EIR**

**A. Preparation.** The EIR consultant, in consultation with the staff planner and the Planning Director shall prepare a proposed Final EIR. If the EIR is prepared by staff, the staff planner in consultation with the Planning Director shall prepare the Final EIR. Costs of preparation shall be borne by the applicant.

**B. Contents.** The contents of the proposed Final EIR shall be as specified by Sections 15132 of the CEQA Guidelines and as required by the City.

**C. Format.** Generally, when comments are received they shall be attached to the Draft EIR with responses. However, where the staff planner, under consultation with the Planning Director, 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.** The staff planner shall distribute the proposed Final EIR as soon as complete to the advisory or decision-making body holding meetings on the project. The proposed Final EIR shall also be forwarded to recipients of the Draft EIR, those who commented on the Draft EIR plus required agencies.

**E. Checklist for Processing the EIR.** The staff planner shall maintain a checklist in the main project file, to document processing steps of the EIR, such as dates of issuance of the notice of preparation, request for proposal, execution of the consultant's contracts, completion of the Draft and Final EIR, and issuance of the notice of determination.

## **7.7 PROCESSING OF AN ADDENDUM TO AN EIR (OR A NEGATIVE DECLARATION)**

**Preparation.** The City may prepare an addendum to a previously certified EIR or Negative Declaration if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a Subsequent EIR have occurred. An addendum need not be circulated for public review but can be included in or attached to the Final EIR or Negative Declaration.

**Distribution/processing.** The staff planner, under consultation with the Planning Director, may distribute an Addendum to an EIR to any agency or individual the staff planner feels is qualified to review the document. If the staff planner finds the Addendum to be significant, the Addendum shall be processed consistent with Section 7.5 of these Guidelines and Procedures. Circulation of the Addendum is not required, but 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, City project staff, and the applicant.

## **7.8 ACTION.**

The decision-making body certifies the EIR, approves the project and adopts findings on feasibility of reducing or avoiding significant environmental effects.

## **7.9 APPEAL**

An appeal of this decision may be filed pursuant to Section 11 of these Guidelines.

## **7.10 NOTICE OF DETERMINATION.**

After the decision-making body has made a decision to carry out a project for which a Negative Declaration, Mitigated Negative Declaration, EIR, Supplemental EIR, Subsequent EIR or an Addendum to an EIR (if significant) or previous EIR has been approved or certified, the staff planner shall, as soon as possible but no later than 5

calendar days following approval of the project, prepare a Notice of Determination (Appendix E) in accordance with Section 15075 or 15094 of the guidelines. Staff shall file the NOD with the County Clerk for all projects proposed by the City. The applicant shall be responsible for filing their NOD with the County Clerk. The applicant shall be responsible for paying all filing fees, including Department of Fish and Wildlife fees if applicable, at the time the notice is filed. No project deemed subject to CEQA review will be operative, vested or final until the filing of the Notice of Determination with the county clerk. If the project requires a discretionary approval from any State agency, the City will also file the NOD with the State Clearinghouse in OPR. The State encourages the City to post notices in electronic form on its website.

## **Section 8: Staged and Program Environmental Impact Report Process**

### **8.1 GENERAL**

A staged EIR is one prepared to assess large capital projects that require multiple discretionary approvals, at least one of which will occur more than two years before construction will begin, Staged EIRs evaluate projects in light of current and contemplated plans to produce informed estimates of environmental impacts (Section 15167)

**A PROGRAM EIR IS ONE WHICH MAY BE PREPARED ON A SERIES OF ACTIONS THAT CAN BE CHARACTERIZED AS ONE LARGE PROJECT, EXPECTED TO BE BUILT OVER A LONG PERIOD OF TIME, AND WHICH MEET THE REQUIREMENTS OF SECTIONS 15168 OF THE GUIDELINES.8.2 USE WITH LATER ACTIVITIES**

When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project. Information available at the time of the later approval would permit consideration of additional environmental impacts.

In the case of a program EIR, later actions that are part of the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared. If an action would have effects that were not examined in the program EIR, a new Initial Study must be prepared, leading to either an EIR or a Negative Declaration. That later analysis may tier from the program EIR as provided in Section 15152 If it is concluded that a subsequent EIR is required, the activity can be approved as within the scope of the original program EIR and no new CEQA document needs to be prepared.

Public noticing of CEQA documents that are subsequent to staged and program EIRs must follow the same protocol as their counterparts not associated with later environmental review.

## **Section 9: Project Review Process**

## 9.1 GENERAL

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

## 9.2 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 EIR approved earlier, and the program EIR adequately describes the activity for the purposes of CEQA (see Section 15168 (e) of the Guidelines).

## 9.3 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 staff planner and/or Planning Director to provide appropriate responses for their review and consideration in the final environmental document.

## 9.4 CONSIDERATION OF ENVIRONMENTAL DOCUMENTS BY DECISION-MAKING BODIES

**A. General.** The decision-making body shall be only the City Council or Planning Commission for the purposes of these Guidelines. Prior to approval or disapproval of a project, the decision-making body shall review and certify the document along with information contained in the final environmental document together with any comments received during the public review process.

**B. Exempt Projects.** For projects exempt from CEQA, the following shall apply:

1. The decision-making body shall make the following finding as part of any ordinance or document approving the project: "That the project is exempt from CEQA, in that (basis for exemption), and therefore, no environmental documents are required."
2. The decision-making body may conclude that an exemption is not supported by the facts and disapprove it. In such cases, the staff planner shall immediately proceed with an Initial Study for the project (See Section 5).

**C. Projects with Negative Declarations.** For projects with Negative Declarations, the following shall apply:

1. The Draft Negative Declaration shall be completed and approved within 180

days of the date that the application was certified as complete.

2. The decision-making body shall make one of the following findings as part of any document or ordinance approving the project: "A Negative Declaration has been prepared, processed, and considered according to CEQA and (either)
  - a. It is found that the project cannot or will not have a significant effect on the environment"; or
  - b. It is found that, although the proposed project may have a significant effect on the environment, there will not be a significant effect in this case because of the mitigation measures specified in the Negative Declaration and added to the description of the project."
3. The decision-making body may conclude that the Negative Declaration is not supported by the facts, or that there is serious public controversy concerning the environmental effects of the project and disapprove it. In such an event, the staff planner shall immediately proceed with preparation of an EIR (See Section 7.).

**D. Projects with Previous Environmental Documentation.** For projects with a previous environmental document, the following shall apply:

1. The decision-making body shall make the appropriate findings in accordance with Sections 15153 and 15091 and 15093 of the Guidelines, if necessary.
2. The decision-making body may conclude that the previous environmental document 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 certification/final action on the project shall occur within one year of the date the application was certified as complete or extended by waiver of deadline by the applicant as agreed to by the Planning Director.
2. The decision-making body may conduct a public hearing on the Final EIR, supplement or Addendum in accordance with Section 15202 concurrent with or before its hearing on the proposed project. No proposed Final, Supplemental, or Addendum 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 EIR, supplement, or Addendum 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, Supplemental, or Addendum 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 that the decision-making body having final approval authority over the project has reviewed and considered the information contained in the EIR (and supplement or Addendum) and found it adequately discusses the environmental effects of the proposed project."

- b. The decision-making body may still approve a project for which one or more significant effects have been identified upon making certain findings that either 1) the impact has been substantially lessened through changes in the project, 2) the changes in the project are the responsibility of a public agency other than the agency making the finding, and/or 3) the mitigation measures or project alternatives are infeasible (see Section 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, Supplemental, or Addendum EIR, but are not mitigated, the decision-making body must adopt a statement of overriding considerations in accordance with Section 15093 of the Guidelines.

### **Section 10: Procedures for the City as a Responsible Agency**

#### **10.1 GENERAL**

This section identifies the special duties of the City of Richmond when acting as a Responsible Agency under the provision of Section 15096 of the Guidelines.

#### **10.2 RESPONSE TO CONSULTATION**

The Planning Director or their representative shall respond to consultation requests by a Lead Agency according to Section 15096 (b) of the Guidelines.

#### **10.3 MEETINGS**

The Planning Director or their representative shall attend meetings requested by the Lead Agency as provided in Section 15096 (c) of the Guidelines.

## **10.4 COMMENTS ON DRAFT EIRS AND NEGATIVE DECLARATIONS**

The Planning Director or his/her representative should review and comment on Draft EIRs and Negative Declarations as provided by Section 15096 of the Guidelines. Where the Director or their representative feels appropriate, they may place the document on the agenda of the Planning Commission for public review and comment or, upon consent of the City Manager, refer the item for comment by the City Council. Copies of the City's comments sent to the Lead agency will be provided to the City Manager and appropriate City Departments and bodies.

## **10.5 NOTICE OF DETERMINATION**

This notice shall be filed in the manner provided under section 7.8 of these procedures and Section 15096 (g) (1) (i) of the Guidelines.

### **Section 11:Appeal Process**

#### **11.1 WHAT DECISIONS MAY BE APPEALED**

Any decision approving, certifying, denying approval, or denying certification of an EIR, ND or MND, a determination that a project is exempt from CEQA pursuant to a statutory or categorical exemption, a subsequent or supplemental EIR, ND, or MND, addenda to a previously prepared CEQA document, master EIRs, focused EIRs, joint CEQA and NEPA documents, CEQA findings, CEQA statements of overriding considerations, or CEQA mitigation monitoring and reporting programs may be appealed.

#### **11.2 WHO MAY APPEAL A CEQA DECISION**

Any member of the public, including the project applicant or elected official, may appeal a CEQA decision.

#### **11.2 PROCEDURES**

##### **A. Appeal bodies.**

**City Council.** The environmental determinations of the Planning Commission may be appealed to the City Council by filing an appeal with the City Clerk and shall be decided by the City Council.

##### **B. Time Limits for Appeals.**

**Appeal of the approval of an ND or MND or the certification of an EIR.** Any person(s) making an appeal must have objected to the approval or certification of the CEQA document during either the public comment period or prior to the close of the final public hearing. Provided this condition is met, appeals of the approval of an ND or MND by a decision-making body or the certification of an EIR by a decision-making body shall be filed within ten (10) calendar days of the date final

action is taken approving the ND or MND or certifying the EIR. When the period for an appeal ends on a weekend or City holiday, the last day to file the appeal shall be extended to the next working day.

**C. Filing.** Appeals made pursuant to this section shall be submitted in writing on a form provided by the City to the City Clerk for decisions made by the Planning Commission. The appellant shall state specifically why the determination or interpretation is not in accord with the provisions of the California Environmental Quality Act and what the specific reasons are for the assertion that there was an error or abuse of discretion by the Planning Commission.

**D. Notification of the parties of appeal.** All interested parties shall be notified when the Planning Director or City Clerk receives an appeal pursuant to this section.

**E. Effect on Decisions.** Decisions that are appealed shall not become effective or final until the appeal is resolved.

**F. Hearing date.** An appeal shall be scheduled for a hearing before the appellate body within 60 days of the City's receipt of an appeal unless both applicant and appellant agree to a later date.

**G. Notice.** A public hearing shall be held if the decision being appealed or reviewed requires a public hearing. Notice of public hearings shall be given in the manner required for the decision being appealed or as set forth in Section 15.04.970 (Notices) of the Richmond Municipal Code.

**H. Hearing.** At the hearing, the City Council shall review the record of the decision and hear the testimony of the appellant, the applicant, and any other interested party. The appellate body shall consider only decisions and issue(s) raised by the appeal.

**I. Decision.** The City Council shall affirm, modify, or reverse the original decision. When a decision is modified or reversed, the City Council shall state the specific reasons for the modification or reversal. Decisions on appeals shall be rendered within 30 days of the close of the hearing.

1. If the decision to require an ND or MND is reversed, an EIR shall be prepared.
2. If a decision to prepare an EIR is reversed an ND or MND shall be prepared.
3. If a determination is made to modify an ND or MND, it shall be modified. If minor revisions to an ND or MND are made a NOI shall be published as shown in Section 6.3 of this document. Substantial revisions (see CEQA Section 15073.5) to an ND or MND shall require recirculation of the document.
4. If a determination is made to modify an EIR, it shall be modified. If minor revisions to an EIR are made it shall be returned to the decision-making body for consideration. If significant new information is added to an EIR or if significant changes are required, the EIR shall be revised and recirculated (as

required by Section 15088.5 of CEQA) as a Draft EIR and a NOP prepared and as shown in Section 7.2 of this document.

5. 5. In making its decision, the City Council shall be guided by the objectives and criteria established by the State CEQA Guidelines.

**J. Effective Date.** A decision by the City Council regarding an appeal shall become final 10 days after the date of the decision.

**K. Cost.** The cost of the appeal shall be borne by the Applicant and paid for out of the account maintained by the City for this project pursuant to the City's cost recovery program.

## **Section 12: Mitigation Monitoring**

### **12.1 GENERAL**

The Mitigation Monitoring process is intended 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; and
- C. Generate information on the effectiveness of mitigation measures, to improve their effectiveness in future applications.

### **12.2 APPLICABILITY**

The mitigation monitoring program is established to comply with Section 15097 of the Guidelines when findings have been made pursuant to Section 15091 (where an EIR was approved with significant effects and changes to the project have been required to avoid or lessen the significant environmental effects identified in the EIR, or the mitigation measures of project alternatives are infeasible) or when a Mitigated Negative Declaration was adopted in conjunction with approving a project.

Mitigation monitoring shall be required for all non-exempt discretionary projects for which mitigation measures have been identified through a Negative Declaration, environmental impact report, or supplemental reports.

### **12.3 PROCEDURES**

**A. Mitigation Monitoring Checklist.** The City shall ensure that project revisions and mitigation measures are implemented by adopting a program monitoring or reporting checklist on the revisions which it has required in the project and the measures it has undertaken to mitigate or avoid significant environmental effects.

After a non-exempt discretionary project is approved with conditions of approval that include mitigation measures identified through a Negative Declaration, EIR or supplement, these mitigation measures shall be incorporated into a checklist. 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 departments that supplied mitigation measures for them to use in their monitoring efforts.

**B. Contents of Mitigation Monitoring Checklist.** The checklist shall contain sections addressing:

1. The responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.
2. The responsibilities of the project applicant.
3. Agency guidelines for preparing monitoring or reporting programs.
4. General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.
5. Enforcement procedures for noncompliance, including provisions for administrative appeal.
6. A process for informing staff and decision-makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

**C. 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 reviews 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 Checklist 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 the measure(s) have been satisfactorily completed. 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. The staff planner, under consultation of the Planning Director, may charge inspection fees or deduct the costs from the account maintained by the City for this project to defray the City's and/or consultant's cost for monitoring ongoing mitigation measures.

- D. Outside Consultants.** For cases in which compliance with mitigation measures that cannot be verified through the plan check process, requires specialized expertise, or is of the magnitude that city staff does not have sufficient resources to administer, an outside consultant may be hired. The City will hire the consultant and will deduct the costs from the account maintained by the City for this project. For projects involving EIRs, the EIR shall include a mitigation monitoring program that includes separate procedures for monitoring.
- E. 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 they suggested have 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.
- F. 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.
- G. Mitigation Monitoring Program Fees.** The staff planner, under consultation of the Planning Director, may charge and collect from the proponent of any proposed project an amount to defray the actual costs to the City for monitoring all mitigation measures for a project as described in Section 12 of these rules and procedures. A deposit pursuant to the City's cost recovery procedures may be required by the Planning Director to be applied towards this fee. Any unused portion of the deposit will be refunded.
- H. Project of statewide, regional, or areawide importance.** When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the Metropolitan Transportation Commission.