I. CALL TO ORDER: Chairman Bill Dickson

➢ Pledge of Allegiance: Commissioner Kevin Siva

➢ Roll Call: Matthew Bassi, Interim Community Development Director

Chairman Bill Dickson, Commissioner Harold Barsh, Commissioner Bill Escandel, Commissioner Buddy Hawkins, Commissioner Kevin Siva.

II. PUBLIC COMMENTS:

➢ At this time, the general public is invited to address the Planning Commission concerning any items that are not listed on the agenda, which are not public hearings or other items under the jurisdiction of the Planning Commission. Comments from the public of any non-agenda items will be limited to three (3) minutes in accordance with City policy.

III. CONSENT CALENDAR ITEMS:

Note: All items listed on the Consent Calendar may be enacted by a single motion without separate discussion. If a discussion or a separate vote on any item is desired by a Planning Commissioner, that item may be removed from the Consent Calendar and considered separately. All remaining items not removed from the Consent Calendar by a Planning Commissioner shall be voted on prior to discussion of the item(s) requested to be pulled.

1. APPROVAL OF PC MINUTES:

➢ June 3, 2008

Page 1
IV. PUBLIC HEARING ITEMS:

➢ None at this time.

V. PLANNING COMMISSIONER COMMENTS

VI. DIRECTORS REPORT FOR THE MONTH OF JUNE, 2008

➢ Local CEQA Guidelines Update

Recommended Action:

The Planning Division Recommends:

That the Planning Commission review the attached Local CEQA Guidelines and recommend that the City Council adopt them.

VII. ADJOURNMENT

The City of Banning Planning Commission is hereby adjourned to the regular Planning Commission meeting of August 5, 2008, starting at 6:30 p.m. in the City Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Planning Department (951) 922-3125. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA title II]
City of Banning

PLANNING COMMISSION MINUTES

June 3, 2008

A regular meeting of the City of Banning Planning Commission was held on Tuesday, June 3, 2008, at 6:30 p.m., in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, CA, 92220.

Commissioners Present: Chairman Dickson
Commissioner Barsh
Commissioner Escandel
Commissioner Hawkins
Commissioner Siva

Staff Present: Interim Community Development Director Bassi
Deputy City Attorney Erica Ball
Senior Planner Clinton
Assistant Planner Kim
Recording Secretary Sorenson

I. CALL TO ORDER

The meeting was called to order at 6:30 p.m. by Chairman Dickson.

II. PUBLIC COMMENTS

Michael Bracken, one of the owners of Liberty Energy, also known as Liberty XXIII Biofuels Power LLC, 1795 W. Ramsey Street, Banning CA and 73-845 Hwy. 111, Palm Desert CA, came forward to give a brief update of his project. This project is for a 15 megawatt, renewable power generation facility to be located south of the airport in the industrial area, adjacent to the City’s wastewater treatment facility. Mr. Bracken mentioned that the Draft EIR will be posted on June 6, 2008 by the State Clearing House. He discussed the CEQA process and a brochure that he presented to the Commissioners and entered into the record. He emphasized that this will be the largest single commercial...
project in the history of the City of Banning. He hopes to bring this project before the Planning Commission in late August.

Fred Sakurai, 43000 Dillon Road, Banning CA, came forward to discuss solar panels being used on commercial buildings. Mr. Sakurai felt it would be a good idea to provide solar information to all applicants who are constructing commercial buildings.

III. CONSENT CALENDAR

1. Review of Minutes

   ACTION (BARSH / SIVA): A motion was moved, seconded and carried that the minutes of May 6, 2008 be approved as presented.

   (Motion carried 4-1) (Commissioner Hawkins abstained)

IV. PUBLIC HEARING:

A. New Items:

1. Design Review #07-7011, Conditional Use Permit #07-807: Design Review to develop a 32,710 square foot hotel (Microtel), comprised of a three story building with 69 guest rooms on 1.03 acres in the General Commercial Zone and Conditional Use Permit for additional building height over 35 feet. Located at 5801 Joshua Palmer Way, APN 419-130-003.

   Senior Planner Clinton presented the staff report and stated that the hotel is proposed to be 39 feet in height, has 69 guest rooms, 69 parking spaces and 16 compact spaces on a 1.03 acre parcel in the General Commercial zone. The conditional use permit is for the additional building height over 35 feet. Ms. Clinton pointed out that the Hampton Inn (52 feet) and the proposed La Quinta Inn (56.5 feet) are higher than this project. Staff recommended approval of the project as conditioned.

   The applicant, Mr. Matthew Akhigbe was at the meeting, but indicated that he did not have anything to add to the presentation.

   Commissioner Hawkins mentioned that there were duplicate conditions on pages 17 and 40 (Conditions 9 and 10). Ms. Clinton stated that one would be removed.

   ACTION (BARSH / SIVA): A motion was moved, seconded and carried that the Planning Commission Approve a Notice of Exemption. In compliance with Public Resources Code § 21080 et. seq. and CEQA Guidelines § 15061, and direct the Community Development Director to prepare a Notice of
Exemption, and within five (5) working days of project approval, file the Notice with the Riverside County Clerk for posting.

(Motion carried 5 - 0)

ACTION (BARSH / SIVA): A motion was moved, seconded and carried that the Planning Commission approve Resolution No. 2008-12 approving the CUP #07-807, based on the findings and conditions of approval; (attached hereto as Attachment “1” and incorporated by reference).

(Motion carried 5 - 0)

ACTION (BARSH / HAWKINS): A motion was moved, seconded and carried that the Planning Commission approve Resolution No. 2008-13, approving Design Review #07-7011, based on the findings and conditions of approval (Attachment “1” from CUP #07-807 and incorporated by reference).

(Motion carried 5 - 0)

2. Zone Text Amendment #08-97503: An Amendment to Zoning Ordinance Section 17.40 (Table 17.40.030) clarifying the number of animals permitted in certain residential zoning districts.

Assistant Planner Julien Kim presented the staff report and stated that the purpose of this zone text amendment was to clarify the number of animals permitted in certain residential zones by amending Table 17.40.030. The intent of the table was to indicate the maximum number of animals allowed per lot in each zone. Therefore, the word “each” (next to the type of animal) needed to be deleted. Staff recommended approval of the amendment.

Commissioner Escandel had some questions regarding the number of animals on the larger lots in town. He also wanted an explanation of the different rural agricultural zones (R-R, RR-H, R-A and RA-H).

Cynthia Barrington, 1081 E. Wesley Street, Banning CA, came forward to discuss the zone text amendment. Ms. Barrington said her home is on seven acres, comprised of three lots. She said she tried to license her dogs and was told she could only have three, but could have twenty-five horses. She wants her property to be considered “rural” and feels that the concept of allowing animals only on lots with houses is strange.

Mr. Bassi stated he would be willing to research this matter and discuss it further with Mrs. Barrington, if she would leave her name, address and phone number with the Recording Secretary.
The Commissioners requested that Mr. Bassi do his research and check with the City Attorney's Office regarding properties with several lots, but with a house on only one lot and get back to the Commission.

**ACTION (BARSH / ESCANDEL):** A motion was moved, seconded and carried that the Planning Commission approve (1) Notice of Exemption. In accordance with Public Resources Code Section 21552(b) and CEQA Guidelines Section 15062 the Planning Commission hereby recommends to the City Council approval of a Categorical Exemption for the project under CEQA Guidelines Section 15061(b)(3) and directs the Community Development Director to prepare and file with the Clerk for the County of Riverside a Notice of Exemption as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062 and (2) Resolution No. 2008-10, recommending to the City Council approval of Zone Text Amendment #08-97503.

(Motion carried 5 - 0)

3. Zone Text Amendment #08-97504: A City Initiated Amendment to the Zoning Ordinance establishing regulations for Boarding Houses and Residential Care Facilities.

Interim Director Bassi stated that this amendment is a request by staff to establish regulations for boarding houses and residential care facilities. At the City Council's request, the Community Development Department and the City Attorney's office has been working together to create this draft ordinance. There was a study session with the Council on May 13, 2008 at which time the Council gave direction to move forward to the Planning Commission for review and recommendation back to the Council. The ordinance includes definitions and revisions on several definitions and there were some changes to the Land Use Table 17.08.020. Congregate Care Facility has been amended to where those facilities are permitted by right in the LDR, MDR and HDR zones. Mr. Bassi discussed the recent State laws and court decisions regarding large and small residential care facilities. Staff recommended approval of the amendment.

**ACTION (BARSH / ESCANDEL):** A motion was moved, seconded and carried that the Planning Commission recommend to the City Council approval of a Categorical Exemption for the project under CEQA Guidelines Section 15061(b)(3) and directs the Community Development Director to prepare and file with the Clerk for the County of Riverside a Notice of Exemption as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062.

(Motion carried 5 - 0)
ACTION (BARSH / SIVA): A motion was moved, seconded and carried that the Planning Commission adopt Resolution No. 2008-11 recommending City Council approval of Zone Text Amendment No. 08-97504.

(Motion carried 5 - 0)

V. PLANNING COMMISSIONER’S COMMENTS

Commissioner Escandel mentioned that he liked the change in the format of the reports and packet. Chairman Dickson inquired about the status of the Design Review Board. Senior Planner Clinton responded that the ordinance has been approved to allow the board, but we have not sought any applicants, yet.

VI. DIRECTOR’S REPORT

Interim Director Bassi stated that the Planning Department took a resolution to the City Council to defer development impact fees for commercial projects until certificates of occupancy. The Council adopted a similar resolution for residential projects earlier. The Tefft tract map time extension was approved. There was also quite a lot of discussion on the warehouse moratorium at the last Council meeting. The Council decided to let the moratorium expire, which will be on June 25, 2008. The City also has been directed by the court to rescind all the Sun Cal approvals from a year and a half ago on the Black Bench Ranch.

Mr. Dickson inquired if anything has come up about the Drag City project. Erica Ball, from the City Attorney’s office responded that a law suit was filed very recently by the applicant (BAA).

VII. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:30 p.m.

Respectfully submitted,

[Signature]
Gini Sorenson
Recording Secretary

Planning Commission Meeting
June 3, 2008
STAFF REPORT

DATE: July 1, 2008

TO: Planning Commission

FROM: Matthew Bassi, Interim Community Development Director
       Thomas D. Jex, Deputy City Attorney

SUBJECT: Local CEQA Guidelines Update

Recommendation:

That the Planning Commission review the attached Local CEQA Guidelines and recommend that the City Council adopt them.

Background:

The purpose of these Local CEQA Guidelines is to provide the City and anyone intending to carry out a project within the City with the requirements of the environmental review process established according to State law, local ordinance, and City practices. These Local CEQA Guidelines serve to augment those procedures contained in the California Environmental Quality Act (Public Resources Code [PRC] Section 21000 et seq.), referred to as CEQA, and the State CEQA Guidelines (Title 14, California Code of Regulations [CCR], Chapter 3, Section 15000 et seq.). The intent of CEQA is to ensure adequate consideration and analysis of potential environmental impacts anticipated to result from approval of discretionary actions.

The City last revised its current Local CEQA Guidelines in 1989 and there have been many changes to CEQA since that time.

Analysis:

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA. These procedures include provisions on how the agency will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt.

The adopted procedures must contain provisions for the following:

- Identifying exempt activities
- Conducting initial studies
- Preparing negative declarations
- Preparing draft and final EIR's
- Evaluating and responding to comments
- Filing documents required or authorized by the CEQA statute or Guidelines
- Providing adequate comments on environmental documents submitted to the public agency for review

The attached Local CEQA Guidelines are intended to update the City's current CEQA Guidelines and bring them into conformity with current CEQA laws and regulations.

**Fiscal Impact:**

None.

Prepared By:

[Signature]

Thomas D. Jex, Deputy City Attorney

Reviewed By:

[Signature]

Matthew Bassi, Interim Community Development Director

PC Attachments:

1. PC Resolution No. 2008-14
   Exhibit A - Local CEQA Guidelines Document
CEQA GUIDELINES

RESOLUTION
NO. 2008-14

EXHIBIT "1"
RESOLUTION NO. 2008-14


THE PLANNING COMMISSION OF THE CITY OF BANNING DOES RESOLVE AS FOLLOWS:

SECTION 1. Recitals.

(a) The California Environmental Quality Act of 1970, as amended ("CEQA"), governs the environmental review and approval process of development within the City.

(b) The provisions of CEQA are contained in Public Resources Code Section 21000 and following, and in the accompanying State CEQA Guidelines, which are set forth in Title 14 of the California Code of Regulations Section 15000 and following.

(c) Public Resources Code Section 21082 and Section 15022 of the State CEQA Guidelines require that each public agency adopt objectives, criteria, and specific procedures consistent with CEQA and the State CEQA Guidelines for the purpose of administering the public agency’s responsibilities under CEQA.

(d) The Planning Commission recommends that the City Council adopt Environmental Review Guidelines in order to fulfill its obligations under CEQA and the State Guidelines, in order to protect local and regional resources in a manner that reflects local values, and translate the myriad of State laws and judicial interpretations regarding CEQA into a precise guide for use by the City, project proponents and the general public.

SECTION 2. Adoption of Environmental Review Guidelines. The Planning Commission recommends that the City Council approve and adopt the City of Banning Environmental Review Guidelines, which are attached hereto as Exhibit "A" and incorporated herein by reference, in fulfillment of the City’s obligation under CEQA to adopt such guidelines.

SECTION 3. Purpose and Implementation of Guidelines. The procedures set forth in the City's Environmental Review Guidelines are not meant to replace the State Guidelines or the substantive requirements of CEQA but to implement and tailor the general provisions of the State Guidelines and CEQA to the specific operations of the City. If any section of the City's Environmental Review Guidelines are in conflict with or contrary to any of the provisions of
CEQA or of the State Guidelines as they now exist or may be amended hereafter, the provisions of CEQA and the State Guidelines shall control.

PASSED, APPROVED AND ADOPTED this 1st day of July, 2008.

William Dickson, Chairman
Banning Planning Commission

APPROVED AS TO FORM AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-14, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 1st day of July, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Virginia Sorenson, Recording Secretary
City of Banning, California

Reso No. 2008-14

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EXHIBIT “A”

LOCAL CEQA GUIDELINES
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DEFINITIONS

"Applicant" - The person, entity, City department, or agency which has made application to the City for review or approval of any activity which is deemed a Project pursuant to the California Environmental Quality Act ("CEQA") or these Local Guidelines.

"Categorical Exemption" – 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.

"CEQA" – Shall refer to the California Environmental Quality Act, commencing with § 21000 et. seq. of the California Public Resources Code, as may be amended from time to time.

"CEQA Guidelines" – Shall refer to the Guidelines for the California Environmental Quality Act, commencing with § 15000 et seq. of the California Code of Regulations, Title 14, Chapter 3, as may be amended from time to time.

"City" – The City of Banning, California.

"City’s Local CEQA Guidelines" – Shall refer to the City’s Local CEQA Guidelines as adopted by the City of Banning.

"Community Development Director" – The City Community Development Director, or his/her designee (who may include a consultant hired by the City), who shall have overall responsibility for City CEQA functions. As used in these City’s Local CEQA Guidelines, CEQA functions include CEQA review of all City Projects and Projects submitted to the City for approval or review pursuant to State and Federal law.

"Decision-making body" – The person, commission or council which has authority by law or ordinance to make a final decision to approve or disapprove the Project at issue.

"Discretion" or "Discretionary" – The Decision-making body’s exercise of judgment or deliberation regarding a decision to approve or disapprove an action or Project, as distinguished from situations in which the Decision-making body merely has to determine whether there has been conformance with applicable statutes, ordinances or regulations.
"EIR – Environmental Impact Report" – A detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a Project and discussing ways to mitigate or avoid the effects. The term "EIR" may mean either a draft or final EIR depending on the context.

"Initial Study" – A preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

"Lead Agency" – 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.

"Lead Department" - The City Planning Division, which shall serve as clearinghouse for the purposes of processing and coordinating environmental review for the City.

"Ministerial" - Minimal or no exercise of personal judgment by the Decision-making body or a public official as to the wisdom or manner of carrying out an action or Project. The agency or official merely applies the particular law or regulation to the facts.

"Mitigation Monitoring Report" – A report prepared for every Project in which a Mitigated Negative Declaration was prepared with mitigation measures. The report shall include time requirements, schedule, phases or tasks for each mitigation measure.

"Mitigated Negative Declaration" – A negative declaration is 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.

"N.E.P.A." – The National Environmental Policy Act (42 U.S.C. §§4321 to 4347), as may be amended from time to time.
“Negative Declaration” – 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.

“Notice of Completion” – A brief notice filed with the Office of Planning and Research by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review.

“Notice of Determination” – A brief notice to be filed by a public agency after it approves or determines to carry out a Project which is subject to the requirements of CEQA.

“Notice of Exemption” – A brief notice which may be filed by a public agency after it has decided to carry out or approve a Project and has determined that the Project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the Project.

“Notice of Preparation” – A brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, the Office of Planning and Research, and involved federal agencies that the Lead Agency plans to prepare an EIR for the Project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR.

“Office of Planning and Research” – The Governor’s Office of Planning and Research (OPR) assists the Governor in land use planning and provided legislative and policy research.

“Project” - Any activity undertaken or proposed by an applicant including any City Department, which creates, or has potential to create, physical change to the City’s environment as guided by § 15378 of the CEQA Guidelines.

“Project Manager” – The Community Development Director’s designee who shall take direction from the Community Development Director and be responsible for carrying out a City Project or reviewing a Project submitted to the City for processing.

“Responsible Agency” – 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.

"Significant Effect on the Environment" – Is 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.

"State Clearinghouse" – A sub-unit of the OPR which carries out three main functions: (1) coordination of the state level review of environmental documents pursuant to CEQA; (2) provides technical assistance on land use planning and CEQA matters; (3) coordination of state review of certain federal grants.

"Statement of Overriding Considerations" – A statement, with corresponding findings supported by substantial evidence in the record, that specific economic, legal, social, technological or other benefits of a proposed Project outweigh the unavoidable adverse environmental effects.

"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.
I. INTRODUCTION

The City’s Local CEQA Guidelines sets forth comprehensive procedures for complying with CEQA. CEQA requires each Public Agency to adopt guidelines (objectives, criteria and specific procedures) for administering its responsibilities under CEQA (§ 15022 of CEQA Guidelines and 21000, et seq. of the Public Resources Code (PRC). (All citations are to the CEQA Guidelines, unless otherwise noted.) The purpose of the City’s Local CEQA Guidelines is to protect both local and regional environmental resources in a manner that reflects local values.

II. DELEGATION OF RESPONSIBILITY

A. Responsibilities of the Community Development Director

Responsibilities of the Community Development Director shall include, but not be limited to, the responsibilities listed throughout these City’s Local CEQA Guidelines, as well as the following activities:

1. Ensuring that the City’s Local CEQA Guidelines set forth in this document are strictly adhered to;

2. Conducting environmental review of all City Projects and Projects submitted to the City for review and approval;

3. Conducting preliminary review to determine if an application is a Project under CEQA;

4. Reviewing the application and Project for completeness;

5. Initial determination of the level of environmental review of the Project in accordance with CEQA, the CEQA Guidelines, City Council policy and direction and as defined in these City’s Local CEQA Guidelines;

6. Preparing, processing and filing all environmental documents and notices as required;
7. Adopting, preparing and updating City procedures, policies, thresholds, guidelines and criteria as needed to forward the intent of these City’s Local CEQA Guidelines;

8. Adhering to CEQA processing time limits as qualified under Local CEQA Guidelines;

9. Determining the adequacy of an EIR or Negative Declaration; and

10. Reviewing CEQA documents prepared for other agencies, providing adequate comments and complying with the requirements for a Responsible Agency under § 15096 of the CEQA Guidelines.

B. Responsibilities of the Project Managers

The Project Manager shall assist the Community Development Director in carrying out the activities required by these City’s Local CEQA Guidelines, as well as to ensure timely submission of all Project information needed by the Community Development Director.

III. OVERVIEW AND SUMMARY OF PROCEDURES

The following subsections provide the procedures for following CEQA requirements. In all cases determination shall be by the Community Development Director or the Director’s designee.

A. Applicability

A proposed activity or application must first be evaluated to determine if it is a "Project" and is, therefore, subject to further CEQA review. A Project is defined as any discretionary action that may cause a physical change to the environment. A Project is the whole of an action, that might result in a physical change to the environment, directly or ultimately. However, if the proposed activity is a Project under CEQA, it may still be exempt from environmental review if the Project falls under an exemption as set forth under CEQA Guidelines, Articles 18 and 19.
IV. AUTHORITY PROVIDED BY CEQA (PRC § 21004; Guidelines § 15040)

CEQA gives the City, as lead agency, authority to require feasible changes in the activities involved in the Project in order to lessen or avoid effects on the environment, disapprove or approve Projects despite significant impacts, and to charge fees to recover costs incurred in the preparation of the environmental documentation.

A. Mitigate (PRC § 21002 & 21004; Guidelines §15041(a))

The City has authority to require changes in the Project to lessen or avoid significant effects on the environment. The City shall draft mitigation measures to achieve the objective of mitigating or avoiding significant effects on the environment identified in the Initial Study or EIR.

The City has the authority to require feasible changes in any or all activities involved in the Project in order to substantially lessen or avoid significant effects on the environment, consistent with the applicable constitutional requirements such as the "nexus" and "rough proportionality" standards required by case law.

B. Approve Projects Despite Significant Effects (PRC § 21002.1; Guidelines §15043)

The City may approve a Project despite significant environmental effects identified in an EIR if the City makes a fully informed and publicly disclosed decision that: (1) there is no feasible way to lessen or avoid these effects; and (2) the City adopts, when certifying the EIR, a Statement of Overriding Considerations to address those significant environmental effects.

Findings shall be included in the adoption identifying the expected benefits from the Project that outweigh the adverse impacts or the costs of mitigating the impacts of the Project.
C. **Disapprove Projects (PRC §21002; Guidelines § 15042)**

The City may disapprove a Project, if necessary, to avoid one or more significant effects on the environment that would occur if the Project were approved.

D. **Fees (PRC § 21089; Guidelines § 15045)**

The City, as a lead agency, may charge and collect reasonable fees in order to recover the estimated cost in preparing environmental documents and for procedures necessary to comply with CEQA on the Project. These fees are subject to periodic review and adjustment in order to assure that City costs are recovered. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable and shall be borne by the applicant.

Costs for the preparation of an EIR (including City administrative costs) will be estimated on a case by case basis depending upon the scope of the EIR. The actual cost to prepare the EIR shall be deposited with the City for all work being done on the EIR. All work required for certification of the final EIR shall be included in the costs of the EIR.

V. **EXEMPTIONS**

Generally, there are two types of Exemptions: Statutory and Categorical. Statutory exemptions apply to Projects that the State Legislature has ruled to have insignificant effects. Categorical exemptions include ministerial Projects and emergency Projects.

The Community Development Director has 30 calendar days in which to determine whether a Project is exempt or not. (PRC § 21080.2; Guidelines 15102.) All proposed activities must be reviewed to determine if one of the following exemptions is appropriate:

A. **Statutory Exemptions**: Certain activities have been exempted from CEQA by the Legislature. These exemptions include feasibility or planning studies, ministerial Projects, and emergency actions. A complete
list of statutory exemptions is included in the CEQA Guidelines Article 18.

B. **Categorical Exemption:** Certain classes or "categories" of Projects have been determined by the State's Secretary for Resources to have an insignificant effect on the environment, and are known as Categorical Exemptions. Currently, the State's CEQA Guidelines recognize 32 classes of Categorically Exempt Projects. A complete list of these exemptions is included in the CEQA Guidelines Article 19.

C. **General Rule:** 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 environmental review. In such cases, 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 (Guidelines, §15061(b)(3)).

D. **Project Rejection or Disapproval:** The Project will be rejected or disapproved by a public agency.

E. **Exemption Verification (PRC § 21084 & 210894.1; Guidelines § 15300.2):** If a Project falls within a Categorical Exemption category, the Community Development Director shall make an additional inquiry as to whether the Categorical Exemption is inapplicable, because of the existence of any of the following factors:

1. **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the Project is to be located. A Project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances, except where the Project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
2. **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive Projects of the same type in the same place, over time is significant.

3. **Significant Effect.** A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

4. **Scenic Highways.** A Categorical Exemption shall not be used for a Project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted Negative Declaration or certified EIR.

5. **Hazardous Waste Sites.** A Categorical Exemption shall not be used for a Project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

6. **Historical Resources.** A Categorical Exemption shall not be used for a Project which may cause a substantial adverse change in the significance of a historical resource.

   If any of these factors cause the Categorical Exemption to be inapplicable, the Applicant shall be required to submit a more detailed Project description. Additional information, data, studies, and the like, may be required of the Applicant in order for the City to make an environmental determination.

F. **Ministerial Projects**

   Activities over which the City has Ministerial authority and that are exempt from environmental review under § 21080(b)(1) of the Public Resources Code include, but
are not limited to, those Ministerial Projects as defined by § 15268 of the CEQA Guidelines as well as the following Ministerial Projects:

1. Issuance of a Certificate of Compliance, issued in accordance with allowed land-use regulations for the zone and conditions of the Project;

2. Issuance of a Certificate of Occupancy, issued in accordance with allowed land-use regulations of the zone and conditions of the Project;

3. Approval of Construction Fencing;

4. Approval of Curb, Gutter or Sidewalk Construction or Reconstruction within an existing right of way;

5. Approval of Driveway Construction or Reconstruction;

6. Issuance of an Encroachment Permit;

7. Issuance of an Electrical Permit;

8. Approval of a Fire Extinguisher System and/or Alarm;

9. Approval of a Fire Hydrant Installation;

10. Approval of a Heating, Air Conditioning and/or Refrigeration Installation;

11. Approval of an Individual Water Service Installation;

12. Approval of an Internal Tenant Improvement which does not result in, or perpetuate, a change in land use or an unmet parking need;

13. Issuance of a Plumbing Permit;

14. Approval of a Soil Boring;

15. Approval of Street Lights;
16. Issuance of a Temporary Permit of less than thirty (30) days for the purpose of tree sales, pumpkin sales, garage sales and similar temporary uses of a localized nature; and

17. Issuance of a Building Permit (unless said Building Permit is for a Historical Structure in which further analysis by the Community Development Department may be required).

G. Notice of Exemption (PRC § 21152; Guidelines § 15062)

If a determination is made that the activity is exempt from CEQA, a Notice of Exemption ("NOE") shall be filed with the County Clerk.

1. When the City approves or decides to carry out a Project, it shall file a Notice of Exemption with the office of the County Clerk within five (5) days of the action. This initiates a 35-calendar day statute of limitations period on legal challenges to the City's determination that the Project is exempt from CEQA. If a Notice of Exemption is not filed, a 180-calendar day statute of limitations applies. After the County Clerk has posted the NOE for 30 calendar days, a copy of the posted NOE is sent back to the City. The City is required to keep a copy of the NOE in the Project file for a period of nine (9) months after that time.

2. The NOE shall include a brief description of the Project, findings of exemption, including citation to the State CEQA Guidelines section under which it is found exempt, and reasons supporting those findings.

3. If state resources could be affected, the NOE shall be filed with the Office of Planning and Research (OPR). Copies of the NOE shall be available for public inspection. Public agencies are encouraged to post NOEs on the internet.
VI. **City Projects: Environmental Review Procedures (PRC § 21065; Guidelines § 15378(a)(1))**

When the City, as the Lead Agency, contemplates any activity resulting in physical change in the environment, 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 initiated by the City, and the amendment of the City of Banning General Plan or any of its elements the City will not solicit bids for the Project or award the contract until the following procedures are followed:

1. The department which contemplates the activity shall request the Community Development Director to determine whether the activity qualifies for a Categorical Exemption. If the activity has been verified as Categorically Exempt and a Notice of Exemption has been filed with the county clerk, no further CEQA review is required and regular processing of plans for the activity may continue without further environmental review.

2. If the activity is not Categorically Exempt, the department shall forward its plans and specifications to the Community Development Director. Upon receipt of the plans and specifications for the Project, the Community Development Director shall conduct an Initial Study to determine if the Project may have a Significant Effect on the Environment. The environmental review process from that point on, including determinations and filing of notices, will be conducted in the same manner as specified above in the procedures for environmental review of private Projects, with the department proposing to carry out the Project being treated as the "applicant." The City Manager shall review and concur with all determinations made by the Community Development Director in connection with this section.
VII. INITIAL STUDY (PRC § 21080; Guidelines § 15063)

The City will prepare an Initial Study within 30 calendar days after determining the application complete. The 30 calendar day period may be extended 15 calendar days upon the consent of the City and the Project applicant. (For public Projects, these time limits do not apply.) Staff recommendations for requiring particular environmental documents may be appealed, in writing, to the approving agency for the Project upon payment of proper fees.

A. Project Information Required

The initial source of Project information for the Initial Study is the City's Environmental Assessment Form (§ 15063(f)). This form is completed by the applicant and received as part of the Project (application) submittal. Any information that the Project proponent or City deems relevant and will facilitate the environmental review of a Project, should be submitted along with the Project application. The City may require the Project proponent to provide additional data and information determined necessary for the preparation of the Initial Study (§§ 15060(b), 15063(e), & 15064(b)).

Additional data or information may be required for the following Projects:

1. Any residential Project in excess of 50 units;
2. Any zone change or general plan amendment request;
3. Any commercial or industrial Project in excess of two (2) acres;
4. Any Project located within a 100-year flood plain;
5. Any Project located in a known sensitive environmental area;
6. Any building currently listed on a federal, state or local inventory, or as determined by a historical resources survey.
7. Any Project for which the Community Development Director has reason to believe, based on size, scope or location, may require additional information or data.

Additional data and information may include any or all of the following:

- Traffic studies;
- Biological studies;
- Air quality analysis;
- Water quality analysis;
- Preliminary soils analysis;
- Preliminary hydrology studies;
- Seismic studies;
- Noise analysis;
- Studies as so required by the Multi Species Habitat Conservation Plan ("MSHCP");
- Historical resources survey;
- Any other study requested by the Community Development Director with concurrence of the City Manager that may be necessary to determine Project impacts.

An unreasonable delay by the applicant in providing information (studies, surveys, maps, etc.) requested by the City shall suspend the running of the time periods as described in § 15107 and § 15108 (§ 15109). After a reasonable period of time, if no action has been taken to collect or supply the necessary information the Project will be set on the Decision-making body’s agenda for denial without prejudice.
B. Preparation

1. Following preliminary review, the City shall prepare an Initial Study for nonexempt Projects to determine if the Project may have a significant effect on the environment. An environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act (NEPA) will meet the requirements of this section.

2. If the City determines that an EIR will be required for a Project, the City may skip further initial review of the Project and begin work directly on the EIR. However, an Initial Study can prove to be a useful tool in assisting the City in identifying the significant effects of the Project upon which the EIR shall focus and provide findings why other effects would not be significant or potentially significant.

C. Content of Initial Study (PRC § 21080; Guidelines § 15063(d))

The Initial Study is prepared by City staff. An Initial Study may rely upon expert opinion supported by the facts, technical studies, or other substantial evidence to document its findings. However, an Initial Study is neither intended nor required to include the level of detail included in an EIR. An Initial Study includes:

1. A description of the Project including the location of the Project;

2. An identification of the environmental setting;

3. An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should
include, where appropriate, a citation to the page or pages where the information is found.

4. A discussion of ways to mitigate the significant effects identified, if any;

5. An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls; and

6. The name of the person or persons who prepared or participate in the initial study.

All phases of Project planning, implementation, and operation shall be considered in the Initial Study. Staff shall consult with City departments, public entities that may be a responsible or trustee agency for the Project and any individuals or organizations otherwise concerned.

D. Determining Environmental Significance (PRC § 21068; Guidelines § 15382)

The environmental evaluation must consider:

**Primary or Direct Impacts:** such as construction-related impacts of dust and noise (§15064(d)(1));

**Secondary or Indirect Impacts:** such as those associated with growth resulting from additional infrastructure capacity (§ 15064(d)(2)); and,

**Cumulative Impacts:** such as those resulting from the total effect of a group of proposed Projects or programs, over time (§ 15065(a)(3)).

Significance will be judged by the intensity and longevity of the change, the size of the area affected, and deviation from existing conditions. Establishing thresholds of significance is the best way to enable a determination of environmental impacts.
E. Mandatory Findings of Significance (§ 15065)

The Project may be found to have a significant effect on the environment if any of the following findings are made by the City.

1. The Project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or 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 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 that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual Project are significant when viewed in connection with the effects of past Projects, the effects of other current Projects, and the effects of probable future Projects.

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

The City must prepare an EIR if any of these Findings occur.

VIII. NEGATIVE DECLARATIONS (PRC § 21064, 21064.5; Guidelines, § 15070)

There are two types of Negative Declarations: a (standard) Negative Declaration, and a Negative Declaration with mitigation, or "Mitigated Negative Declaration." When the Initial Study shows that the Project may not have a significant effect on the environment CEQA allows for a Negative Declaration to be adopted.
CEQA continues to give the City the option of allowing applicants to modify their Project so that the City can make a finding that the Project would not have a significant effect on the environment as proposed.

A. Preparation of a Negative Declaration or Mitigated Negative Declaration (PRC §§ 21064, 21064.5; Guidelines § 15070)

A Negative Declaration or Mitigated Negative Declaration shall be prepared for nonexempt Projects if:

1. The Initial Study shows that there is no substantial evidence of the Project having a significant effect on the environment; or

2. The Initial Study identified potentially significant effects but:
   a. Prior to completion of the Initial Study, the Project is revised to avoid or mitigate the effects to a point where no significant effects would occur; and
   b. There is no substantial evidence that the Project, as revised, may have a significant effect on the environment.

B. Contents of Negative Declarations or Mitigated Negative Declaration (§ 15071)

A Negative Declaration or Mitigated Negative Declaration 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.

C. Public Notice (PRC § 21092; Guidelines § 15072)

The City shall notify the public of its intention to adopt a Negative Declaration or Mitigated Negative Declaration, and provide opportunities to review it and any related documents by direct mail to all landowners within a 300 foot radius of the exterior Project boundary. The notice shall include a reference as to where all documents are available for review. The notice shall also appear in a newspaper of general circulation.

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, the City shall send copies of the Negative Declaration or Mitigated Negative Declaration to the State Clearinghouse for distribution to the state agencies (§ 15073). In addition, a certified copy of the negative declaration or mitigated negative declaration shall be sent to all responsible and trustee agencies via certified mail.

Public review period for a Negative Declaration or Mitigated Negative Declaration shall be at least 20 calendar days prior to a decision by the Decision-making body. The review period for a Negative Declaration or Mitigated Negative Declaration which has been submitted to the State Clearinghouse shall be at least 30 calendar days (Public Resources Code, Section 21091).

D. Approval or Denial of Negative Declarations or Mitigated Negative Declarations

The Decision-making body for the Project shall have the authority to approve, deny or take any other action pertaining to the Negative Declaration or Mitigated Negative Declaration.
E. **Notice of Determination (PRC § 21152; Guidelines § 15075)**

After deciding to carry out or approve a Project for which a Negative Declaration or Mitigated Negative Declaration has been approved, the City shall file a Notice of Determination with the County Clerk within five (5) working days of the approval. After the NOD has been posted for 30 calendar days by the County Clerk, the NOD will be returned to the City. The returned NOD must then be retained for not less than nine months (PRC § 21152). Filing and posting the Notice of Determination starts a 30-calendar day statute of limitations on court challenges to CEQA approvals. Failing to file the Notice of Determination within the required time period extends the statute of limitations to 180 calendar days. If the Project requires a discretionary approval from any State agency, the notice shall also be filed with the Governor’s Office of Planning and Research.

IX. **ENVIRONMENTAL IMPACT REPORTS (“EIRs”)**

The EIR process starts with the Community Development Director’s initial decision to prepare an EIR. This decision will be made either during preliminary review (Guidelines, § 15060) or at the conclusion of an Initial Study (§ 15064).

A. **Decision to Prepare an EIR (PRC § 21080; Guidelines § 15063)**

If the Initial Study determines that a Project may have a significant effect on the environment, which cannot be eliminated by changing the Project or adding mitigation measures, the Community Development Director shall initiate the preparation of either a “EIR” or a “Focused EIR”.

The Community Development Director, or the Director’s designee, will determine whether an EIR is required within 30 calendar days of determining the application complete. A 15-calendar day extension may be approved upon consent of the applicant. (§ 15102).
B. **Scope of an EIR (PRC § 21080.4; Guidelines § 15082)**

The breadth of analysis in the EIR shall be determined by one or more of the following: the Initial Study, comments of the City staff, and responses to the Notice of Preparation. The EIR should focus on potentially significant impacts. For Projects of unusual scope or complexity, City staff may hold a community scoping meeting. If a scoping meeting is held, it shall be held during the same time period as the Notice of Preparation.

C. **Letter to Applicant**

Prior to the preparation and distribution of the Notice of Preparation, the City shall send to the Applicant a letter giving notice of the need for an EIR. Within fifteen (15) business days of receiving the notice the Applicant shall notify the City in writing of his/her agreement to proceed with an EIR and his/her agreement that an EIR is warranted. Failure of the Applicant to respond in writing within this time period shall result in the scheduling of the Project for hearing before the approving authority with a recommendation of denial without prejudice.

D. **Appeal**

If the Applicant wishes to appeal the City’s finding that an EIR is required, the Applicant shall file an appeal within 10 business days of the date of mailing the letter. The Applicant shall submit, along with the appropriate filing fee, a letter specifying the reasons why an EIR should not be required. The appeal shall be filed with the Community Development Department. Action on these appeals shall be heard by the Decision-making body for the Project.

E. **Notice of Preparation (§ 15082)**

After determining that an EIR is required, and upon written confirmation of acceptance by the Applicant of the need to prepare an EIR, the City shall prepare and distribute a Notice of Preparation ("NOP") for an EIR. The NOP shall consist of the Notice of Preparation form and include a copy of the Initial Study, if any. To send copies of the
Notice of Preparation, the City shall use either certified mail or any other method of transmittal which provides it with a record that notice was received.

If any State agency is affected, the Notice shall be sent to the State Clearinghouse in the Office of Planning and Research for distribution.

F. Response to Notice of Preparation

Each Responsible Agency shall provide a response within 30 calendar days after receiving the Notice of Preparation. If a Responsible Agency fails to reply within 30 calendar days with, either a response or a request for additional time, the City may assume that the Responsible Agency has no response to make.

The response at a minimum shall identify:

1. The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

2. Whether the agency will be a responsible agency or a trustee for the Project.

A generalized list of concerns does not meet the requirements for response.

G. Preparation of Administrative Draft EIR (§ 15084)

The Administrative Draft of the EIR is considered a working document to be circulated among City staff and any responsible agency, if appropriate. The consultant shall submit a minimum of five (5) copies of the Administrative Draft EIR for staff and applicant review. The purpose of staff review is to evaluate the EIR for adequacy and accuracy prior to public circulation. Generally, review of the Administrative Draft EIR is concluded within a few weeks, after which comments are provided to the consultant, who prepares the draft EIR for publication and distribution.
H. **Notice of Completion of a Draft EIR ($15085)**

As soon as the draft EIR is completed and ready for public circulation, 20 copies shall be submitted to the City for review. A Notice of Completion shall be filed with the Governor's Office of Planning and Research ("OPR"), 1400 10th Street, Room 121, Sacramento, CA 95814. This Notice of Completion may be filed in a printed hard copy or in electronic form on a diskette or by electronic mail transmission. Additionally, public agencies are encouraged to make copies of Notices of Completion available in electronic format on the Internet. Receipt of this notice by OPR will initiate the mandatory 45 calendar day review period for draft EIRs. The State Clearinghouse may set shorter review periods when requested by the City due to exceptional circumstances.

I. **Public Review of Draft EIRs (PRC § 21091; Guidelines § 15087)**

At the time the Notice of Completion is filed with OPR, the City shall provide notice of the availability of a draft EIR by means of a public notice in the City's local newspaper of general circulation. Additional notice shall be provided by direct mailing to property owners within 300 feet of the site. The public notice shall include the name of the staff person to contact, length of the review period, and deadline for receipt of comments. The public notice shall inform the public of the presence of hazardous wastes, if any.

Copies of the draft EIR will be made available at the City library and at the public counter at the Community Development Department. Copies of the draft EIR will be made available for purchase at a local printing/copying company. The public review period for a draft EIR shall not be less than 45 calendar days (30 calendar days when authorized by the State Clearinghouse (PRC § 21091)).
J. Evaluation of Responses to Comments (PRC § 21092.5; Guidelines § 15088)

After the review period for the draft EIR closes, staff will assemble all written comments and summary minutes of comments made at the public hearing(s) and transmit this package to the consultant for preparation of the "Response to the Comments." Staff will work closely with the consultant to determine:

1. Which comments address environmental impacts and mitigation(s). These comments shall be responded to by the consultant/staff;

2. Which comments address the merits of the Project (as distinguished from environmental impacts of the Project) and do not require a response, but should be noted for the record;

3. Which comments are beyond the scope of environmental review (such as legal interpretations); and

4. Which comments on impacts are too speculative for evaluation.

Responses shall be provided for all comments. At least ten (10) calendar days before certifying the EIR, the response to comments document shall be provided to all responsible and or trustee agencies that provided comments on the draft EIR.

K. Public Hearing on Draft EIR

A public hearing held before the Decision-making body shall be conducted to solicit additional comments on the draft EIR. It is the City's intent to hold the public hearing on the draft EIR concurrently with the development application(s) for the Project. The public hearing shall be scheduled upon conclusion of the review period and once all responses to comment letters have been prepared. For clarity and accuracy of the record, written comments are encouraged in conjunction with, or in lieu of, oral testimony. The Decision-making body may extend the
comment period and continue the public hearing, if additional time is warranted.

L. Preparation of the Final EIR (PRC § 21100; Guidelines § 15089)

The final EIR will consist of the draft EIR unchanged, copies of comments received, the response to comments (which includes corrections and error of fact of the draft EIR) and a list of persons and organizations who made comments.

M. Findings (PRC § 21081; Guidelines § 15091)

The Decision-making body shall not approve or carry out a Project for which a certified EIR identifies one or more significant environmental effects unless written findings for each of the significant effects, accompanied by a brief explanation of the rationale for each finding are made. Findings must be supported by substantial evidence in the record of Project review. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the final EIR.

A Statement of Overriding Considerations does not substitute for these required findings.

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N. Consideration of Drafting Findings for Project Approval

After considering the Final EIR and in conjunction with making findings, the Decision-making body may decide whether or how to carry out the Project. The Project for which the EIR was prepared shall not be approved unless either:

1. the Project, as approved, will not have a significant effect on the environment; or

2. the City has eliminated or substantially lessened all significant effects on the environment where feasible as shown in the findings and any remaining significant effects on the environment have been determined to be unavoidable under § 15091 of the CEQA Guidelines and acceptable due to overriding concerns as described in § 15093 of the CEQA Guidelines.

O. Statement of Overriding Considerations (PRC § 21081; Guidelines § 15093)

If the benefits of a proposed Project outweigh the unavoidable adverse effects, such effects may be considered "acceptable." The Decision-making body shall take into consideration economic, legal, social and technological benefits for consideration when determining if the benefits outweigh the significant effects. If the Decision-making body approves a Project that allows the occurrence of significant effects, it shall adopt a Statement of Overriding Considerations as part of the Project approval that states specific reasons to support its action based on the certified final EIR and/or other information in the record. This Statement of Overriding Considerations shall be in writing. This Statement of Overriding Considerations shall be supported by substantial evidence in the record. The consultant who prepared the draft and final EIR shall be responsible for drafting the findings, subject to review and approval by the Decision-making body.
P. Certification of the Final EIR and Time Limits

The Decision-making body shall certify the final EIR for private Projects within one year of accepting the application for the Project as complete. Upon consent of the Applicant and the City, the one-year limit may be extended a maximum of an additional 90 calendar days. Changes to the Project and or delays by the Applicant in providing necessary information to complete the final EIR shall suspend these time periods. In certifying the final EIR the Decision-making body shall find that the final EIR was prepared in compliance with CEQA, was reviewed and considered prior to Project approval, and reflects the independent judgment of the Decision-making body.

Q. Notice of Determination

A Notice of Determination ("NOD") shall be filed with the County Clerk within five (5) working days of Project approval when an EIR has been prepared and certified for a Project. After the posting of the NOD for at least 30 calendar days the County Clerk shall send the NOD back to the City. The City shall retain the notice for not less than nine (9) months. If the Project requires discretionary approval from a state agency, the Notice of Determination shall also be filed with the Office of Planning and Research.

X. MITIGATION MONITORING AND/OR REPORTING PROGRAM (PRC § 21081.6; Guidelines § 15097)

Mitigation measures are specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves. Poorly drafted measures are not only difficult to implement, they are difficult to report on and monitor.

A. Processing of Mitigation Monitoring And/Or Reporting Program: Roles and Responsibilities

1. Administrative Responsibilities: It shall be the overall responsibility of the Community Development
Director, or the Director’s designee, to perform the duties of Mitigation Coordinator.

2. **Selection of Monitor:** The Community Development Director or the Director’s designee may hire the person(s) or firm(s), in consultation with the Project developer, to monitor the Mitigation and Reporting Program for each Project. In all cases, the person(s) or firm(s) responsible for monitoring shall have sufficient expertise to determine whether or not the mitigation measure has been accomplished. The Applicant shall be responsible for payment of all fees and costs associated with Project monitoring.

3. **Mitigation Monitoring and Reporting Program (MMRP):** The MMRP shall be made a part of the certified final EIR, Negative Declaration or Mitigated Negative Declaration prior to Project approval or shall otherwise be implemented to the satisfaction of the Community Development Director.

   If the required MMRP has not been prepared as part of the preparation of the Mitigated Negative Declaration or EIR, the Community Development Director shall cause the MMRP to be prepared at the expense of the Applicant, prior to Project approval.

4. **Monitoring Responsibility:** The Mitigation Coordinator (MC) shall be responsible for:

   a. Coordinating the monitoring tasks and verification program;

   b. Ensuring that the Project proponent prepares a compliance schedule;

   c. Coordinating monitoring by various City departments and other agencies;

   d. Processing and filing compliance reports and verification reports;
e. Ensuring that the Project proponent provides a deposit to fund the Mitigation Monitoring Program.

f. Preparing an annual environmental monitoring report.

The Mitigation Coordinator shall submit regular progress and verification reports to the Community Development Director.

B. Enforcement Responsibility

The Mitigation Coordinator is authorized to enforce compliance with the Monitoring Program. When compliance is lacking or incomplete, the Mitigation Coordinator is empowered to either stop work, temporarily stop work, or allow work to continue while compliance is being achieved.

C. Exemptions - Limitations

Any deviation from the adopted mitigation measures can only be amended or deleted by the approving body of the environmental document. All mitigation measures shall be met unless the circumstances or conditions that required the mitigation no longer exist.

D. Preparation of Monitoring And/Or Reporting Program

A Mitigation Monitoring and/or Reporting Program shall be prepared by the EIR consultant for every Project for which an EIR was prepared where mitigation measures were adopted by the Decision-making body. A Mitigation Monitoring Report shall be prepared for every Project for which a Mitigated Negative Declaration was prepared when mitigation measures were adopted by the Decision-making body. The Mitigation Monitoring and/or Reporting Program shall be reviewed and accepted by the Community Development Department prior to its implementation and use. The Program shall contain the following:

1. A statement that the requirements of the adopted Program run with the real property on which the
Project is located. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted Program.

2. A statement which specifies the responsibilities of the applicant and the Mitigation Coordinator, or his or her designee, as well as any professional expertise on completion or evaluation of any part of the Program.

3. The time requirements, schedule, phases or tasks for each mitigation measure that will, upon completion, result in issuance of a Program Completion letter from the Mitigation Coordinator.

The Mitigation Monitoring and Reporting Program shall be written to maintain consistency with the Project as approved. It shall be the responsibility of the Mitigation Coordinator to determine that the proposed Mitigation Monitoring Program complies with City requirements.

E. Program Completion Letter

It shall be the responsibility of the Mitigation Coordinator to determine compliance with each of the required mitigation measures. Once all of the mitigation measures have been met, the MC will prepare and mail a letter to the Applicant indicating full compliance with the Mitigation Monitoring and Reporting Program for the Project or phase. Should there be an ongoing mitigation measure imposed, the MC shall prepare and mail a letter to the Applicant upon completion of all mitigation measures and indicate the ongoing need of the mitigation measure and the necessary time frame for follow-up.

F. Compliance With CEQA Guidelines § 15097

At all times, the City's Mitigation Monitoring and/or Reporting Program will be consistent with CEQA Guideline § 15097.
XI. CEQA FORMS

The City shall use the CEQA forms that are in substantial conformance with Appendix A through L of the State CEQA Guidelines.

Adopted by City Council Resolution No. _______ on _________, 2008.