

COUNTY OF IMPERIAL'S

**RULES AND REGULATIONS TO IMPLEMENT
CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA)
AS AMENDED**

(PUBLIC RESOURCES CODE 21000 et. seq.)

prepared by

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Adopted by the Board of Supervisors
As the official rules for use by:

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Board of Supervisors:

APPROVAL TRACKING

AMENDED CEQA RULES AND REGULATIONS

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TRANSMITTAL RECORD (by CD only)

- Agriculture Department
- Air Pollution Control District
- Board of Supervisors (each member)
- Fish & Game Commission
- City of Brawley
- City of Calexico
- City of Calipatria
- City of El Centro
- City of Holtville
- City of Imperial
- City of Westmorland
- Clerk of the Board of Supervisors
- County Executive Office
- County Counsel
- District Attorney
- Director of Airports
- Health Department
- Health/Environmental Health Services Division
- Imperial Irrigation District
- LAFCO (each member)
- Library (County, El Centro, Brawley, and Calexico)
- Planning Commission (each member)
- Public Works
- Superintendent of Schools
- Treasurer

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INTRODUCTION

State law requires that every lead agency have defined rules or guidelines to implement the California Environmental Quality Act (CEQA).

This manual therefore, is the County of Imperial's "Rules and Regulations to Implement CEQA" hereinafter referred to as the CEQA Rules. These regulations shall be applicable to any (all) County Department(s) that has responsibilities under CEQA as either a "Lead Agency" or a "Responsible Agency". The Planning & Development Services Department is hereby designated as the principal "Lead Agency" Department for the County with respect to the CEQA compliance, for all projects.

These CEQA rules may also serve as the "Rules" for other agencies, provided said agency adopts this manual by reference within its regulations. As an example, the Local Agency Formation Commission (LAFCO), may adopt the County's "Rules".

In the event this manual is adopted by reference, whenever the term "COUNTY" is used, it shall be substituted by the appropriate agency name.

Section 1: POLICY

The policy of the County of Imperial and any adopting agency shall be the same as, and in support of, those policies defined by the State Legislature in the California Environmental Quality Act (Division 13, Public Resources Code, (PRC), 21000 et. seq.) as may be amended by Legislative Act. It is the Board of Supervisors intent to properly protect the health, safety and welfare of the County's citizens. It is also the Board of Supervisors intent to provide an effective, efficient and coordinated process that does not unduly add time or delay to the process.

Section 2: PURPOSE

These CEQA Rules are designated to implement the California Environmental Quality Act of 1970 (CEQA) and the Guidelines thereto, which are contained in Title 14, Chapter 3 of the California Administrative Code, now cited as the CALIFORNIA CODE OF REGULATIONS (CCR) (commencing with Section 15000).

These CEQA Rules shall apply to any project for which the County of Imperial, or any District, Agency, and Department, which is governed by the Board of Supervisors is the lead agency or "responsible agency". The provisions contained herein are not intended to replace either the terms of CEQA or the terms of the accompanying Guidelines. In the event that any of the following rules or procedures conflict with the provisions of CEQA or the Guidelines, the provisions of CEQA or the Guidelines shall control.

These Rules shall have the same effect and force as if codified within the County's codified ordinance system.

Section 3: DEFINITIONS

The words and phrases used in these CEQA Rules shall have the meaning as used in CEQA and Guidelines, except for the following:

- (A) **"CEQA Compliance & Implementation"** The County Planning & Development Services Department is the "officially" designated County

environmental compliance department and shall be responsible for the proper and effective implementation of the California Environmental Quality Act (CEQA). This shall apply for all County sponsored as well as all private projects as per County Ordinance, Section 90107.06.

- (B) **“Clerk”** shall refer to the County Clerk/Recorder.
- (C) **“Decision-making body”** shall refer to the Board of Supervisors, the Planning Commission, the Planning Director, and the Environmental Evaluation Committee (EEC), authorized by law or ordinance to approve or disapprove the project under consideration, or determine the type of environmental documentation necessary for the project being reviewed.
- (D) **“Co-Lead Agency”** means that two departments or agencies acting in partnership to prepare a CEQA document. One of the two agencies may have some greater responsibility, however to the extent possible the two agencies act as one. The intent is to streamline and coordinate the environmental review process particularly where both agencies are required to consider permitting or approving a project. For example, the County and the Air Pollution District, or the County and LAFCO, could be co-lead agencies.
- (E) **“Discretionary Project”** means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.
- (F) **Director** as used in these “CEQA Rules” shall mean the Director of the Planning & Development Services Department and shall also include staff designee(s).
- (G) **“EIR”** or **“Environmental Impact Report”** refers to 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.
- (H) **“Guidelines”** shall refer to the State Guidelines for implementation of the California Environmental Quality Act (California Code of Regulations, Title 14, Division 6, Chapter 3) and as thereafter amended.
- (I) **“Initial Study”** refers to the preliminary analysis prepared by the lead agency (*Planning & Development Services Department*) to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant effects to be analyzed in an EIR.
- (J) **“Lead Agency”** means the public agency (Imperial County Planning & Development Services Department) “officially” designated County environmental compliance department, which has the principal responsibility for carrying out or approving a project, or reviewing projects from another agency, and which has primary responsibility to determine or decide whether an EIR, Mitigated Negative Declaration, or Negative Declaration, is required for the project and will cause the appropriate

document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in the Guidelines, Section 15051. See *a/so* “co-lead” agency.

- (K) **“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. Law is applied to the facts as presented, but no special discretion or judgment is employed in reaching a decision.
- (L) **“Mitigated Negative Declaration”** refers to a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but mitigation measures will be adopted in order to reduce the impacts on the environment to less than significant.
- (M) **“Mitigation Measures”** include:
 - (a) Avoiding the impact altogether by not taking a certain action ***or parts of an action.***
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 - (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- (N) **“Negative Declaration”** refers to 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 will not require ***the preparation of*** an EIR.
- (O) **“Notice of Completion” (NOC)** refers to a brief notice filed with Office of Planning & Research (aka) State Clearinghouse by a lead agency as soon as it has completed a Mitigated Negative Declaration (MND) or Draft EIR and is prepared to send out copies for review.
- (P) **“Notice of Determination” (NOD)** refers to a brief notice filed by a public agency after it approves or determines to carry out a project, which is subject to ***the requirements of*** CEQA. The local agency shall file the Notice of Determination (NOD) with the County Clerk and when applicable the Office of Planning & Research (OPR) within five (5) days upon the approval of the Planning Director’s Action (PDA) or Planning Commission (PC) or Board of Supervisors (BOS).

- (Q) **“Notice of Preparation” (NOP)** refers to a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project.
- (R) **“Project”** shall mean the whole of an action, which has the 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:
- (a) An activity directly undertaken by any public agency.
 - (b) An activity undertaken by a person which is supported, in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
 - (c) 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.
- (S) **“Responsible Agency”** means a public agency, which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR, Mitigated Negative Declaration, or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency or the “Co-Lead Agency” which have discretionary approval power over the project.
- (T) **“Trustee Agency”** means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies include:
- (1) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and the game refuges, ecological reserves, and other areas administered by the department.
 - (2) The State Land Commission with regard to state owned "sovereign" lands such as the beds of navigable water and state school lands.
 - (3) The State Department of Parks and Recreation with regard to units of the State Park System.
 - (4) The University of California with regard to sites within the Natural Land and Water Reserves System.

Section 4: GENERAL RESPONSIBILITIES OF THE PLANNING & DEVELOPMENT DEPARTMENT SERVICES

- (A) The Director or designated staff shall be responsible for reviewing each project application submitted to or by the County, or one of its departments, to determine the appropriate action to be taken under the standards and conditions set by the CEQA *Process* and as found in

Appendix "A" (*CEQA Process Flow Chart*) of these Rules. This also includes the review of documents received from other agencies where the County is considered a "responsible agency".

- (B) The Director or designated staff shall be responsible for assuring that the mandated time periods prescribed by CEQA and this document are met.
- (C) The Director or designated staff shall be responsible and have the sole discretion for accepting and determining completeness of all applications for projects received by the Planning & Development Services Department.
- (D) Where a County Department is required to comply with CEQA, it shall coordinate the CEQA process with Planning & Development Services and the Director shall make the final determination as to the type of document required. The CEQA determination on a County-sponsored project may be appealed to the Planning Commission who shall have the final authority and no appeal to the Board of Supervisors is allowed.

Section 5: APPLICATION PROCEDURES for PROJECTS

- (A) Initial Discussion:
 - (1) The Director or designated staff may meet with Applicant, or at Applicant's request, to review the project proposal. (Pre-Application Meeting) (Minute Order #18, May 22, 1990). This may be in a formal or informal "Pre-Application" procedure.
 - (2) The Director or designated staff shall provide the Applicant with the application package, and the fee schedule.
 - (3) The Director or designated staff shall give general guidance in application procedures and identify necessary information and materials to be provided by the Applicant.
- (B) Determination of Completeness:
 - (1) The Applicant shall provide to the Planning & Development Services Department; a check for all required fees, all information shown on the forms provided by the Planning & Development Services Department, and a completed, signed, and dated application which may include an "Owner's Affidavit", "Indemnification Agreement", and all other supporting documentation requested by the County. Without a full "Indemnification Agreement" signed by the applicant, the application shall automatically be deemed incomplete.
 - (2) The Planning & Development Services Department staff shall:

- (a) Review the application and all supporting data for completeness, and whether the appropriate fees have been submitted. Note: Depositing the check does not constitute acceptance;
 - (b) Forward a copy of each such application to all EEC Departments;
 - (c) Inform the applicant of any “known” potential environmental impacts; and,
 - (d) Make a determination of completeness within thirty (30) days of receipt of application forms supporting documentation and necessary fees from Applicant.
- (C) Application Found Incomplete:
- (1) If the Director or designated staff determines the application to be incomplete, staff shall inform the Applicant in writing, by Letter of Transmittal and advise the Applicant what is necessary to make the application complete. A copy of the Letter of Transmittal shall be placed in the file indicating this action was taken. At this point the application shall be deemed “rejected and returned to the applicant”.
 - (2) The Applicant must provide the Planning & Development Services Department with the additional and/or revised information needed. Upon submission of the requested additional or revised information, Planning staff shall determine the completeness of the application in accordance with (B) above.
 - (3) If after sixty (60) days from date of rejection, the Applicant has not supplied the necessary information to complete the application, the application and supporting documentation shall be returned to applicant along with all unused fees, and the project file closed. The Planning & Development Services Department shall refund only those fees not already used in the processing of the application.
 - (4) On any project that is returned, pursuant to provisions of paragraph (3) above, the Applicant shall file a new application with full (new) fees, and the application shall be deemed a “NEW” application.

Section 6: EXEMPTIONS

- (A) Determination of Exemption: The Director or staff shall make a determination as to whether the project is exempt from CEQA and these Rules. If a "minor" project is found to be exempt, the Planning & Development Services Department shall complete a “minor project” form that shall be filled out by the Planner responsible for the file and placed into the file noting that the project is not subject to CEQA.

(B) Project Type: The following projects are exempt from the requirements contained in these Rules:

(1) CEQA Guidelines exemptions as follows

(a) 25 Statutory Exemptions, CEQA Guideline, Sections 15260 - 15285.

**Statutory
Exemptions
Continued**

(1) **Ongoing Projects;** Only applies to projects that were carried out by a public agency prior to 11/23/70. Additionally this exemption does not apply if project has a significant amount of unused funds and it is still feasible to modify the project to mitigate potentially adverse environmental effects or in the event the public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(2) **Feasibility and Planning Studies:** A project involving only feasibility or planning studies for possible future actions which the decision making body has not approved, adopted, or funded, it does require consideration of environmental factors.

(3) **Discharge Requirements:** The State Water Resources Control Board and the regional boards are exempt, when adopting waste discharge requirements, except as defined in the Federal Water Pollution Control Act.

(4) **Timberland Preserves:** Adoption of timberland preserve zones under Government Code Sections 51100 et seq.

(5) **Adoption of Coastal Plans and Programs:** CEQA does not apply to activities and approvals pursuant to the California Coastal Act, (PRC, Sections 30000, et seq).

(6) **General Plan Time Extensions:** CEQA does not apply to time extensions granted by the Office of Planning and Research for the preparation and adoption of one or more elements of the County General Plan.

(7) **Financial Assistance to Low or Moderate Income Housing:** CEQA does not apply to actions taken by

**Statutory
Exemptions
Continued**

the Department of Housing and Community Development to provide financial assistance for such developments, as defined by Health and Safety Code, Section 50093.

- (8) **Ministerial Projects:** Ministerial permits are exempt from the requirements of CEQA. The determination of what is “ministerial” can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. Further defined by Guidelines, Section 15268.
- (9) **Emergency Projects:** Emergency projects as defined by Guidelines, Section 15269 are exempt from the requirements of CEQA.
- (10) **Projects Which Are Disapproved:** Projects that are rejected prior to the initiation of the CEQA process are exempt from said process, provided the project is not later resubmitted.
- (11) **Early Activities Related to Thermal Power Plants:** For actions taken by a public agency, relating to the expenditure, obligation, or encumbrance of funds, by said public agency for planning, engineering, or design purposes or for “conditional” sale or purchase of equipment, fuel, water (except groundwater) steam or power. However the thermal power plants will be subject to CEQA and any documentation prepared as to site or facility will include the environmental impact of the early activities.
- (12) **Olympic Games:** CEQA does not apply to the activities or approvals necessary to the bidding for hosting and funding or carrying out of Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games.
- (13) **Rates, Tolls, Fares, and Charges:** The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies, which are for the following purposes: meeting agency operating expenses, including,

**Statutory
Exemptions
Continued**

wages, benefits; purchasing or leasing of supplies or equipment, materials; meeting financial reserves; funding for capital projects necessary to maintain public services or obtaining funds for intra-city transfers. However rate increases to fund capital projects for the “expansion” of a system are subject to CEQA .

- (14) **Family Day Care Homes:** The establishment or operation of a large family day care home, which provides in-home care for up to twelve (12) children, as defined in the Health and Safety Code, Section 1596.78.
- (15) **Specified Mass Transit Projects:** The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities. Facility extensions not to exceed four (4) miles in length, which are required for transfer of passengers to or from exclusive public mass transit guideway or busway public transit services.
- (16) **Transportation Improvement and Congestion Management Programs:** The development and adoption of a regional transportation improvement program or the state transportation program, however individual projects developed pursuant to these programs are subject to CEQA review.
- (17) **Projects Located Outside California:** CEQA does not apply to any project or portion thereof which is located outside of the State of California. Said projects may still be subject to National Environmental Policy Act or the state in which the project is located if adopted environmental regulations exist.
- (18) **Application of Coating:** CEQA does not apply to a discretionary decision by an Air Quality Management District for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant provided the district makes the applicable findings in Guidelines, Section 15278.

Air Quality Permits: CEQA does not apply to the issuance, modification, amendment, or renewal of any

**Statutory
Exemptions
Continued**

permit by an Air Pollution Control District or Air Quality Management District pursuant to Title V, as defined in the Health and Safety Code, Section 390533 or pursuant to the Air District Title V program established under the Health and Safety Code, Section 42301.10, 42301.11 and 42301.12, unless the issuance, modification, amendment, or renewal authorized is a physical or operational change to a source or facility.

Other Statutory Exemptions: CEQA does not apply to the "Other Statutory Exemptions" (a) through (w) as defined in Guidelines, Section 15282.

- (19) **Housing Needs Allocation:** CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county, pursuant to Government Code, Section 65584.
- (20) **Pipelines:** CEQA does not apply to any project consisting of the inspection, maintenance, repair, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, as defined in Guidelines, Section 15284.
- (21) **Transit Agency Responses to Revenue Shortfalls:** CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, as defined in Guidelines, Section 15285.

Note: For a complete explanation of the Statutory Exemptions listed above review the CEQA Guidelines, Sections 15260 – 15285 or as amended.

**Categorical
Exemptions
Continued**

- (b) 32 Categorical Exemptions, CEQA Guidelines, Sections 15300 - 15333.
- (1) **Existing Facilities:** Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or

minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination, as defined in Guidelines, Section 15301.

- (2) **Replacement or Reconstruction:** Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, as defined in Guidelines, Section 15302.
- (3) **New Construction or Conversion of Small Structures:** Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure, as defined in Guidelines, Section 15303.
- (4) **Minor Alterations to Land:** Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation, which do not involve removal of healthy, mature, scenic trees, except for forestry and agricultural purposes, as defined in Guideline, Section 15304.
- (5) **Minor Alterations in Land Use Limitations:** Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any change in land use or density, such as lot line adjustments, variances, lot mergers, reversion to acreage as per the Subdivision Map Act (State of California Government Code, Section 66410-66499.58), or the issuance of minor encroachments, further defined in Guideline, Section 15305.
- (6) **Information Collection:** Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities, which do not result in a serious or major disturbance to an environmental resource. These are strictly for information gathering

**Categorical
Exemptions
Continued**

purposes, or as part of a study leading to an action, which a public agency has not yet approved, adopted or funded.

- (7) **Actions by Regulatory Agencies for Protection of Natural Resources:** Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.
- (8) **Actions by Regulatory Agencies for Protection of the Environment:** Class 8 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and reclamation of standards allowing environmental degradation are not included.
- (9) **Inspections:** Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.
- (10) **Loans:** Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions, further defined in Guidelines, Section 15310.
- (11) **Accessory Structures:** Class 11 consists of construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial or institutional facilities, such as on-premise signs, small parking lots, or the placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in publicly owned parks, stadiums, or other facilities designed for public use.
- (12) **Surplus Government Property Sales:** Class 12 consists of sales of surplus government property

Categorical Exemptions Continued

except for parcels of land located in an area of statewide, regional, or area wide concern identified in Guidelines, Sections 15206 & 15312.

- (13) **Acquisition of Land for Wildlife Conservation Purposes:** Class 13 consists of acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under the Fish and Game Code, Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.
- (14) **Minor Additions to Schools:** Class 14 consists of minor additions within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.
- (15) **Minor Land Divisions:** Class 15 consists of the division of property in “urbanized areas” zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20%.
- (16) **Transfer of Ownership of Land in Order to Create Parks:** Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources, further defined in Guidelines, Section 15316.
- (17) **Open Space Contracts or Easements:** Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interest in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

Categorical Exemptions Continued

- (18) **Designation of Wilderness Areas:** Class 18 consists of the designation of wilderness areas under the California Wilderness System.
- (19) **Annexations of Existing Facilities and Lots for Exempt Facilities:** Class 19 consists of only the following annexations: (a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing government agency whichever is more restrictive, provide, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; (b) Annexations of individual small parcels of the minimum size for facilities exempted by Guidelines, Section 15303 "New Construction or Conversion of Small Structures."
- (20) **Changes in Organization of Local Agencies:** Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised such as the establishment of a subsidiary district, consolidation of two or more districts having identical powers or the merger with a city of a district lying entirely within the boundaries of the city.
- (21) **Enforcement Actions by Regulatory Agencies:** Class 21 consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered by the regulatory agency, as defined in Guidelines, Section 15321.
- (22) **Educational or Training Programs Involving No Physical Changes:** Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures such as changes in curriculum or training methods, or change in the grade structure in a school

**Categorical
Exemptions
Continued**

which does not result in changes in student transportation.

(23) **Normal Operations of Facilities for Public Gatherings:** Class 23 consists of the normal operations of existing facilities for public gathering facilities for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purpose of this section, “past history” shall mean that the same or similar kind of activity has been occurring for at least three (3) years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but not be limited to, racetracks, stadiums, convention centers, auditoriums, amphitheatres, planetariums, swimming pools, and amusement parks.

(24) **Regulation of Working Conditions:** Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate, employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work.

(25) **Transfer of Ownership of Interest in Land to Preserve Existing Natural Conditions:** Class 25 consists of the transfer of ownership in interests of land in order to preserve open space, habitat, or historic resources as defined in Guidelines, Section 15325.

Categorical Exemptions Continued

(26) **Acquisition of Housing for Housing Assistance Programs:** Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

(27) **Leasing New Facilities:** Class 27 consists of leasing of a newly constructed or previously unoccupied

privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA and meets the standards as defined in Guidelines, Section 15327.

- (28) **Small Hydroelectric Projects at Existing Facilities:** Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where the capacity of the generating facility is 5 megawatts or less and defined in Guidelines, Section 15328. The operation of the generating facilities will not change the flow regime in the affected stream, canal or piping.
- (29) **Cogeneration Projects at Existing Facilities:** Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in Guidelines, Section 15329.
- (30) **Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances:** Class 30 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing \$1 million or less. No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit, or the relocation of residences or businesses, or the actions involves the potential release into the air of volatile organic compounds as defined in the Health and Safety Code, Section 25123.6 or as further defined in Guidelines, Section 15330.
- (31) **Historical Resource Restoration/Rehabilitation:** Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995).

**Categorical
Exemptions
Continued**

(32) **In-Fill Development Projects:** Class 32 consists of projects characterized as in-fill development meeting the following conditions:

- (a) The project is consistent with the County's General Plan designation and policies as well as with the County's Land Use Ordinance and Zoning.
- (b) The proposed project occurs within the County limits on a site of no more than five acres substantially surround by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

(33) **Small Habitat Restoration Project:** Class 33 consist of projects not to exceed five acres in size to assure that maintenance, restoration, enhancement, or protection of habitat for fish, plant or wildlife provided that:

- (a) There would be no significant adverse impact or endangered, rare or threatened species or their habitat pursuant to section 15065.
- (b) There are not hazardous materials at or around the project site that may be disturbed or removed, and
- (c) The project will not result in impacts that significant when viewed in connection with the effects of past project, the effects of other current project, and the effects of probable future projects.
- (d) Examples of small restoration projects may include, but are not limited to:
 - (1) Revegetation of disturbed area with native plant species;
 - (2) Wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat;
 - (3) Stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish;

Categorical Exemptions Continued

- (4) Projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment;
- (5) Stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and
- (6) Culvert replacement conducted in accordance with published guidelines of the Department of Fish and Game or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

Note: For a complete explanation of the Categorical Exemptions listed above review the CEQA Guidelines, Sections 15300 – 15333 or as amended.

(2) Imperial County Categorical Exemptions are as follows:

- (1) **Clearing or Leveling of Agricultural Land:** Clearing or leveling of land for agricultural use; (This does not include any grading or excavating not directly related to agriculture field leveling).
- (2) **Geothermal Temperature gradient wells:** Installation and operation of temperature gradient wells for locating geothermal resources. This does not preclude other aspects of geothermal operations from CEQA review.
- (3) **Mining Test Boring:** Test boring to determine the type of material for future mining activities. However, it must meet SMARA threshold for minimum surface disturbance, i.e. one acre or less.
- (4) **Monitoring wells:** Installation of and operation of monitoring wells (for example vadose) for groundwater monitoring. The installation of such wells are exempt from CEQA, however the project's, which typically necessitate installation and operation of monitoring wells may not be exempt from CEQA review.
- (5) **Certificate of Compliance:** Where a project requesting a Certificate of Compliance is consistent with the Subdivision Map Act and does not result in a change in the physical layout of the area which would potentially result in an adverse effect the environmental.

- (C) Exceptions to Exemptions: Projects that are located in sensitive environments; would result in cumulative impacts; have a significant effect on the environment; affect scenic highways; affect historical resources, and/or are hazardous waste sites do not qualify as exemptions, pursuant to Guidelines Section 15300.2.
- (D) Notice of Exemption:
 - (1) When the Director or staff determines that a project is exempt from CEQA and after the project is approved, a Notice of Exemption may be filed. The Notice shall include: (1) a brief description of the project; (2) a finding that the project is exempt from CEQA, including a citation to the Guidelines section or statute under which it is found to be exempt; and (3) a brief statement of reasons to support the finding.
 - (2) The Notice of Exemption may be filed with the County Clerk/Recorder within five working days of the project's approval. Copies of such notice shall be made available for public inspection and a list of such notices shall be posted by the Office of the Clerk and shall remain posted for a period of thirty (30) days.
 - (3) The appeal procedure shall essentially be the same as an appeal of an EEC decision outlined in Section 7(D). The Applicant, submitting Department or interested party may appeal by submitting appropriate fees.

**Section 7: INITIAL ENVIRONMENTAL ASSESSMENT PROCEDURE/
PROCEDURE FOR ENVIRONMENTAL EVALUATION COMMITTEE
(EEC)**

- (A) Initial Study:
 - (1) Upon acceptance (not receipt) of an application/project permits, all projects, subject to CEQA, pursuant to Section 5, the Planning & Development Services Department shall transmit a copy of the full application package to each member EEC Department, to provide them with an adequate opportunity to review the application, assist in the preparation of the Initial Study and be prepared for the EEC hearing.

All projects will proceed to the EEC according to the "project time schedule". The project time schedule will be updated each year.
 - (2) Fees for the Initial Study shall be charged in accordance with the adopted County of Imperial Codified Ordinances, Title 9, Division 9, or as later amended. Project(s) with pending fees owed will not be scheduled till the fees are paid.
 - (3) The Planning & Development Services Department, as Lead Agency, shall review all project applications subject to CEQA and

make the following determinations based on the type of project under review:

- (a) Determine whether the particular activity is a “project” subject to CEQA, as defined in these Rules and as defined by Guidelines Section 15378;
 - (b) Determine whether the project is exempt from CEQA, pursuant to Guidelines, Section 15061;
 - (c) Determine whether the project is ministerial, pursuant to Guidelines, Section 15268;
 - (d) Determine whether or not the project is categorically exempt, pursuant to Guidelines, Article 19, Section 15300 et. seq. However, all Class exemptions are inapplicable when the activity is listed as an Exception, pursuant to Guidelines, Section 15300.2;
 - (e) Determine whether or not the project is an emergency project, Guidelines, Section 15269;
 - (f) Determine on a case-by-case basis those activities which fall within an existing EIR, Mitigated Negative Declaration, or Negative Declaration that is adequate to cover a project, and,
 - (g) CEQA does not apply to projects which a Lead Agency has rejected or disapproved after an initial screening based on the merits of the project, Guidelines 15270.
- (4) The Director or designated staff shall consult with responsible agencies, trustee agencies, and others responsible for any natural resources affected by the project to determine the environmental concerns for each agency involved in the project application as appropriate. These concerns may be addressed in the Initial Study, at the EEC meeting, the Planning Commission and/or Board of Supervisors.
 - (5) The Initial Study shall be prepared by staff using the current Environmental Checklist Form, attached as Appendix B of these Rules and as Appendix G of the CEQA Guidelines, or as amended.
 - (6) Applications cannot be amended without permission of the reviewing body, i.e. the Lead Agency. If the Applicant requests an amendment to an application, the Lead Agency may require, as a condition of permission to substantially amend an application, that the applicant withdraw the original application and reapply, with or without a new filing fee, or agree to a new filing date sufficiently subsequent to the original filing date to permit the staff and reviewing agencies additional time required to review non-substantial changes as appropriate.

- (7) All public and private applications that seek a County permit or entitlement must contain a "project description" from which it can be determined whether the project may have a significant effect on the environment. The application itself may indicate sufficient data from which any significant, adverse environmental impacts may be assessed. The project description shall include:
- A detailed map showing the precise location and boundaries of the proposed project.
 - A statement of the objectives sought by the proposed project, including the purpose of the project.
 - A general description of the project's technical, economic, and environmental characteristics.
 - Analysis to determine consistency with the Imperial County General Plan.
 - Major projects may require more than the usual information required of the Applicant, including statistical data such as demographics, etc.
- (8) On ALL projects, all Initial Study marks shall be documented in writing, as to why they were so marked.
- (9) Initial Studies may be prepared by a consultant hired by the County with applicant paying the costs for such an Initial Study prepared by the consultant. The County Planning & Development Services Department shall require independent verification through its own efforts, or by contract, of any information submitted by an Applicant to be paid by the Applicant.
- (10) After the Initial Study has been completed by the Planning & Development Services Department based on the EEC Department's comments, but prior to the EEC's decision, the Applicant may modify the project to mitigate any significant, adverse environmental impacts of the project. These mitigations will be noted as "Mitigation Measures" in the Planning Commission and/or Board of Supervisors agenda package. A Mitigation measure proposed by a County Department shall be monitored by that Department pursuant to a "Mitigation/Monitoring Program".
- (11) Copies of Initial Studies shall be available for public review at the Planning & Development Services Department upon request. The person requesting the copy shall pay the cost of the copy of the Initial Study. The complete Initial Study, Staff Analysis, and supporting documentation shall be forwarded to the Environmental Evaluation Committee for review and action at least ten (10) days prior to their next scheduled EEC hearing.
- (12) Projects to be heard by the EEC require a one time publication of the project/Initial Study in a newspaper of greatest circulation within

the County at a minimum of ten (10) days prior to the EEC hearing date (County Ordinance, Section 90104). The Planning and Development Services Department will direct mail notice to the applicant and any party having requested a notice in writing and paid any Time and Materials fees (County Ordinance, Section 90901) for such noticing as determined by the Planning & Development Services Department.

(13) At a minimum notice of the EEC meeting and Agenda will be posted 72 hours in advance of the meeting. Additional noticing can be done as determined necessary by the Planning & Development Services Department.

(B) Review by the Environmental Evaluation Committee (EEC):

(1) **Composition and Role of EEC:** The Environmental Evaluation Committee is a committee consisting of a seven (7) member panel. The members of the EEC shall be the following County Officials, or their designees, as appointed by the Board of Supervisors. A listing of the authorized "designees" shall be on file with the Planning & Development Services Department.

(a) Director, Department of Health Services/Environmental Health Services Division;

(b) Fire Chief

(c) Agricultural Commissioner

(d) Air Pollution Control Officer

(e) Director, Department of Public Works;

(f) Sheriff, and

(g) Director, Planning & Development Services Department.

(2) **Staffing:** The Planning & Development Services Department shall act as staff for the EEC. The Director or his designee shall Chair the EEC.

(3) **Voting:** A quorum shall be a minimum of four (4) of the seven (7) appointed representatives. An affirmative vote shall require a minimum of four (4) "yes" votes.

(4) **Legal Advice:** County Counsel's Office shall be legal advisor to the EEC.

(a) Technical assistance and advice is available to the EEC, when requested by the committee, from any other department of the County or outside agencies or individuals.

Only the Department Head or the designee assigned to the EEC shall have the authority to discuss and impose any mitigation measures based upon the application under review.

(b) The EEC shall be the County body with the principal responsibility for the implementation of CEQA, the State Guidelines, and the intent of these "Rules and Regulations to Implement CEQA".

- (5) **EEC Meeting:** The EEC shall meet to make an environmental determination on the project proposal within sixty (60) days after an application has been found to be complete. The determination period may be extended for fifteen (15) days if Applicant, or submitting Department and Director mutually agree, in writing. The EEC can also have "special" meetings to be scheduled on a case-by-case basis with any related costs to be borne by the requesting Applicant after required notice has been given.
- (6) **Notice of EEC Meeting:** EEC meetings will be duly noticed and be open to the public. For notification purposes, the Master EEC Calendar shall be posted and published in the newspaper at least two (2) times per year and the Applicant shall be sent notice of the hearing date. The Director or staff may cause a specific project to be noticed more extensively than required herein, if said project is determined to be of significant interest or have potential significant impact.

(C) PROCEDURES FOR EEC MEETINGS:

- (1) The Director or designee shall insure that the EEC meeting is properly recorded, via tape or digital recording, or other appropriate device.
- (2) There will be an "introduction" with the date, time and outline of the various Initial Study (I.S.) to be reviewed at the EEC meeting. For the record, those present will be identified who are sitting as the EEC with those absent also noted for the record.
- (3) Transcription of any hearing, or a copy of the tape, will be made available to anyone upon receipt of a written request filed with the Planning & Development Services Department. The cost of preparation of a transcription shall be paid by the person(s) requesting said transcription.
- (4) The Agenda Items may be handled in whatever sequence determined to be appropriate by the Chairperson of the EEC.
- (5) Each individual Initial Study, Project Description, will be read and if appropriate, the Planner who prepared the Initial Study will be present to answer any questions. The project's location on the overhead projector will be shown as well as any aerial photos needed of the area surrounding the project.

- (6) The Applicant will have an opportunity to present the project and to answer any questions from or by the EEC members. The public may also comment and question the Applicant and/or the EEC on the project.
- (7) The EEC will go over each page and/or question of the Initial Study individually or as a group and appropriate changes made with a motion, second and vote on each change to the marks, and/or any mitigation measure proposed by the particular EEC Department imposing the measure.

(D) DECISION BY THE EEC:

- (1) At the conclusion of the Initial Study review, if there are no further questions, then the Chairperson shall ask for the EEC's decision, on the three mandatory findings of significance, determine type of environmental document needed, and a motion, second and deciding vote will be called for and each EEC member shall fill out their voting sheet on that particular project under review and submit it to the Chairperson.
- (2) By their deciding vote, the EEC shall determine whether a Negative Declaration, Mitigated Negative Declaration, an EIR, or other CEQA document is necessary, based on the mitigation measures imposed, if any.
- (3) The Applicant is advised of when the Planning Commission will hear the project **subject to the required notice having been given**, or as determined by the project's schedule, unless the project is "appealed". The Applicant, or any interested party, can appeal the EEC's decision to the Planning Commission or in a LAFCO project to LAFCO within ten (10) days with the appropriate letter(s) and fees included. See Section (E) for appeal procedure.
- (4) The EEC will then proceed with the next Initial Study until all of the Agenda Items are completed. At this time the EEC meeting will be adjourned until the next regularly scheduled EEC meeting, or unless a special EEC meeting is scheduled.
- (5) Notice of EEC actions shall be regularly published in a newspaper of greatest circulation in Imperial County, or as otherwise determined appropriate by the Director.
- (6) If the EEC determines that "no further documentation is necessary because of a previous environmental document", the regular published notice must include the following statement; "This activity is within the scope of an earlier approved document which adequately describes the activity for CEQA purposes", or words to that effect. The earlier document is to be cited.

(E) Appeal:

The Applicant or any member of the public may appeal to the Planning Commission on the CEQA determination by the EEC. Such appeal must be accompanied by a fee established by the Imperial County Land Use Ordinance, Section 90901.03 or as amended. Any such appeal must be filed as follows:

- (1) Filed with the Secretary to the Planning Commission (Director) within ten (10) calendar days of the date of decision. When filing an appeal clearly state the reason(s) for the appeal, and provide all information necessary to the Planning & Development Services Department of the EEC's determination.
 - (2) When so filed, the appeal shall stay further processing of the application, and shall stay all applicable time frames.
 - (3) Prior to hearing any appeal of the Environmental Evaluation Committee, the Secretary to the Planning Commission shall set a time and place of hearing thereon. No less than 10 days prior to the date of hearing, notice of the date, time and place of hearing, location of the property and the substance of the appeal shall be given by the following methods:
 - (a) A one time publication in a newspaper of greatest circulation at a minimum of ten (10) days prior to hearing date, and
 - (b) Direct mail notice to applicant, all parties of record interest, all parties having filed a written request to receive notices, all contiguous property owners; and, one of the following:
 - 1) In the R-1, R-2, R-3, R-4 Zones, all adjacent property owners' whole property is within 500 feet of the exterior boundary of the subject parcel,
 - 2) In the A-1, A-2, A-3 and R-A Zone, all adjacent property owners whose property is within 1/2 mile of the exterior boundary of the subject parcel,
 - 3) In all zones, except as specified in "1" and "2" above, all adjacent property owners whose property is within 1,000 feet of the exterior boundary of subject parcel.
 - (c) Posting the Commission agenda at both the Planning & Development Services *Department* and County Administration Center at least ten (10) days prior to hearing.
 - (4) The decision, on appeal, by Planning Commission shall be deemed final. There shall be no appeal from the Planning Commission to the Board of Supervisors on a CEQA determination, e.g. Negative Declaration, Mitigated Negative Declaration, or EIR.
- (F) Preparation of a Negative Declaration (ND)/ Mitigated Negative Declaration (MND):

- (1) When the EEC determines that preparation in the manner specified by the Guidelines of a Negative Declaration, or Mitigated Negative Declaration, is appropriate, the Planning & Development Services Department shall:
 - (a) Prepare and transmit a Notice that the County has decided to prepare a Negative Declaration, or Mitigated Negative Declaration, to each Responsible, Trustee, and other affected agencies pursuant to the Guidelines Section 15072, as appropriate;
 - (b) Mail a Notice of Intent (*NOI*) to adopt a Negative Declaration to the last **known** name and address of all organizations and individuals who have previously requested such notice in writing;
 - (c) Publish a Public Notice of Proposed Negative Declaration, or Mitigated Negative Declaration (This Notice shall indicate that interested parties have ten (10) calendar days from the date of decision to appeal the Negative Declaration, or Mitigated Negative Declaration determination);
 - (d) The County Clerk shall post such notices in the Office of the County Clerk within 24 hours of receipt for a period of at least twenty (20) days;
 - (e) Advise the applicant of the proposed Negative Declaration, or Mitigated Negative Declaration; and,
- (2) Where one or more state agencies will be a Responsible or Trustee Agency for the project or have jurisdiction by law over natural resources affected by the project, the Planning & Development Services Department shall appropriately file sufficient copies of the proposed Negative Declaration, or Mitigated Negative Declaration with the State Clearinghouse for distribution to these agencies. The public review period for the State Clearinghouse distribution is 30 (thirty) days unless shortened by the State Clearinghouse.
- (3) The Planning Commission/Board of Supervisors shall consider the Negative Declaration or Mitigated Negative Declaration within 180 days of the application being deemed complete and prior to the project being approved or disapproved.
- (4) If the Planning Commission/Board of Supervisors, after reviewing the project substantially changes or deletes any of the "mitigation" measures that the Applicant has agreed to at the EEC meeting, then the Planning Commission/Board of Supervisors shall do one of the following:
 - (a) Make specified "Findings" for each change or modification based on substantial evidence on the record; or,
 - (b) If a "mitigation" measure is deleted from the conditions agreed to by the Applicant at the EEC meeting then the

project shall go back to the EEC for another environmental assessment due to the change in the project description by the decision-making body. The decision-making body shall act within the CEQA time frames and shall, if necessary deny a project to meet State-mandated time frames, unless applicant agrees to legally extend the mandated time limit.

- (5) If authorized by the Board of Supervisors by County Ordinances, on projects that may be approved by the Director, the Director shall have the authority at time of hearing to approve the Negative Declaration.
- (6) The Planning & Development Services Department shall file a Notice of Determination within five (5) working days, once final approval of a project or a decision to carry out a project subject to CEQA by the decision-making body is made, with the County Clerk/Recorder and the appropriate State Office as required by the Guidelines.
- (7) The filing of a Notice of Determination and subsequent posting starts a 30-day statute of limitations for court challenge to the approval under CEQA.
- (8) Additionally, projects subject to CEQA which have an adverse impact on fish and wildlife resources, and for which a "Notice of Determination" has been filed with the County Clerk/Recorder's Office, a fee may be required made payable to Imperial County if a Negative Declaration, or Mitigated Negative Declaration, was prepared and approved by the Planning Commission/Board of Supervisors (PRC 21089(b)).

Section 8: PREPARATION OF ENVIRONMENTAL IMPACT REPORTS (EIR)

- (A) In the event that the "project" has been found to have a significant effect on the environment, as determined by the EEC, and not appealed to the Planning Commission, then an EIR shall be prepared. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the local decision-making body shall respond to the information found in the prepared environmental documentation by one of the following methods:
 - (1) Altering the proposed project;
 - (2) Imposing conditions on the approval of the project;
 - (3) Choosing an alternative way of meeting the same need;
 - (4) Disapproving the project;

- (5) Make the finding that changing or altering the project is not feasible; or,
- (6) Make the finding and Statement of Overriding Considerations that the unavoidable significant environmental damage is acceptable (Guidelines, Section 15093).

The EIR may be in the form of a focused EIR, a subsequent EIR, a supplement to an EIR, an addendum to an EIR, staged EIR, program EIR, or other type of EIR pursuant to Article 11, Guidelines, Section 15160, et. seq. as determined appropriate by the EEC and/or Planning Commission.

(B) Documentation Source: When the EEC determines that preparation of Environmental Impact Report is appropriate and no appeal is filed within ten (10) days, the Planning & Development Services Department shall:

- (1) Prepare a letter to Applicant outlining fees, CEQA procedures and may require a meeting with the approved consultant(s) and/or project proponent, if necessary, pursuant to Section 9 of these Rules;
- (2) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency and/or co-lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.
- (3) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.
- (4) The notice of preparation shall include a description of the project, the location of the project, and the probable environmental effects of the project.
- (5) Prepare, or cause to be prepared, a Draft and Final EIR in the manner specified by the CEQA Guidelines, and these County Rules.

(C) Private Projects:

- (a) The Director shall determine which projects must be done by County administered-contracts and shall have the authority from the Board of Supervisors to authorize preparation of the Environmental Impact Report by contract, and shall attempt to do so within forty-five (45) days of EEC's determination, or on appeal to the Commission within 45 days of the Commission's decision.
- (b) Fees for (A) and (B) are established by County Ordinance(s).

(D) Draft EIR (DEIR):

- (1) The Draft EIR shall be prepared in accordance with these County Rules and State Guidelines.
- (2) The Planning & Development Services Department shall determine if the Draft EIR is complete. When the Draft EIR is satisfactorily completed, a Notice of Completion (NOC), via Transmittal Form, shall be filed with the appropriate State Office along with the required copies of the DEIR.
- (3) A Public Notice indicating public availability of the Draft EIR for review shall be published as required by the Guidelines Section 15087, and shall include a brief description of the project, its proposed location, an address where copies of the DEIR are available for public review/comment, and the period during which comments will be received.
- (4) The notice required under this section shall be posted in the office of the county clerk for a period of at least thirty (30) days. The county clerk shall post such notices within twenty-four (24) hours of receipt.
- (5) The public review period for a draft EIR should not be less than forty-five (45) days nor longer than sixty days 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than forty-five (45) days, unless a shorter period, not less than thirty (30) days, is approved by the State Clearinghouse
- (6) Comments received after the deadline need not be evaluated or considered, but may be forwarded to the decision-making body for consideration.
- (7) The NOC and Draft EIR shall also be circulated to the same persons and agencies receiving the Notice of Preparation (NOP).
- (8) The Draft EIR shall be sent to all respondents to the NOP.

(E) Recirculation of the DEIR prior to Certification

- (1) The Planning & Development Services Department shall re-circulate the DEIR when significant new information is added to the DEIR after notice is given of the availability of the DEIR for public review, but before certification by the decision-making body. As used in this Section the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to the DEIR is not "Significant" unless the DEIR is changed in a way that deprives the public of the meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project

alternative) that the project's proponents have declined to implement.

- (2) "Significant new information" requiring recirculation shall be as defined by the Guidelines Section 15088.5.
- (3) The recirculation of the DEIR requires the same noticing and comment period as established under Section (D) "Draft EIR" above.

(F) Final EIR (FEIR):

- (1) After evaluating the comments received from persons who have reviewed the Draft EIR, the Planning & Development Services Department shall prepare, or cause to be prepared, a Final EIR. The contents of the Final EIR shall be as required by the Guidelines Section 15132.
- (2) The written response to a Public Agency comment letter shall be provided at least ten (10) days prior to certifying an EIR.
- (3) The written response to the Final EIR is sent to each person or agency commenting on the Draft EIR at least fifteen (15) days prior to public hearing held on the project subject.
- (4) The review of a Final EIR should focus on the responses to comments on the draft EIR. The "Response to Comments" can be a separate section in the FEIR or a revision to the DEIR.

(G) Action of the Decision-Making Body:

- (1) The decision-making body shall mean, the Board of Supervisors or the Planning Commission or the Director to the extent that said body has legal authority by ordinance, or state law, to render a final decision. The decision-making body shall, if appropriate, certify that the Final EIR has been completed in compliance with CEQA and the State Guidelines and that the information contained therein has been reviewed and considered in the decision on the project.
- (2) Notwithstanding the above, no public agency shall approve or carry out a project for which an EIR has been completed which identified one or more significant effects of the project unless the public agency makes one or more written findings specified by the Guidelines for each of those significant effects, accompanied by a statement of the facts supporting each finding.
- (3) If the required findings for a "certified" FEIR are made according to PRC, Section 21081(a), and a monitoring and/or reporting program is adopted which includes changes to the project approval, the monitoring/reporting program shall be designed to ensure compliance during project implementation.

(H) Notice of Determination (NOD):

When the County Board of Supervisors, or the Planning Commission, or the Director, has made a final decision concerning a project for which an EIR has been prepared and certified, the Planning & Development Services Department shall file, within five (5) working days, a Notice of Determination. The NOD shall be filed with the County Clerk and/or appropriate State Office as required by the Guidelines, and local regulations.

Projects subject to CEQA, which have an adverse impact on fish and wildlife resources, and for which a "Notice of Determination" has been filed with the County Clerk's Office, a fee may be required made payable to Imperial County if an Environmental Impact Report was prepared and certified by the decision-making body (PRC 21089(b)).

Section 9: EIR PREPARATION UNDER COUNTY CONTRACT

When an EIR is required the following procedures shall be followed;

- (A) The Director may prepare a Request for Qualifications to be sent out to various consulting firms and establish a listing of qualified consultants from which to choose a consultant. The Director may in lieu of a formal RFP, after consultation with the applicant request informal responses from three or more consultants as determined appropriate by the Director. It is the intent of the Board of Supervisors to allow as much flexibility to the Director in an effort to streamline the process and reduce unnecessary time delays. It is also the Board of Supervisors intent that applicant(s) be consulted on the selection of consultants, however in no case shall the applicant(s) have the option or right to select a consultant. It is the Director's sole discretion on the final selection of any consultant.
- (B) The consultant shall provide the Planning & Development Services Department, upon request, one copy of a work/contract proposal containing:
 - (1) The personnel to be assigned;
 - (2) Wage scales;
 - (3) Time to complete Draft EIR and Final EIR;
 - (4) Total costs to provide a specified number of Draft EIR's;
 - (5) Total costs to provide a specified number of Final EIR's;
 - (6) Summation of total costs to provide described services in a "not to exceed cost" format; and,
 - (7) Any additional information requested by Planning Staff.
- (C) All proposals shall be reviewed and analyzed by the Director, for the awarding of a contract to a particular bidder.

- (D) The Applicant has thirty (30) days from the date of notification to make payment of the above-described funds. At the end of the thirty (30) days, if the Applicant has not paid said funds, the project application will be closed out and returned to Applicant, and this shall be the equivalent of the project application having been deemed incomplete. In the alternative, the Director shall present the project to the Commission for denial.
- (E) When the cost of preparing an EIR by County contract exceeds the Applicant's deposit, the Applicant shall pay the County the additional sum prior to submission of the EIR to the appropriate decision-making body.
- (F) If the cost of the EIR being prepared is less than the estimated cost and Applicant's deposit, the amount of over payment shall be refunded to the Applicant.
- (G) The environmental documentation developed under County Contract by the consultant shall be submitted to the Director for review and approval. (An EIR is a County document and as such it is to be clear to the Applicant and/or consultant that the selected/approved consultant works for the Planning & Development Services Department although paid for by the Applicant). In the event the Director determines that the applicant has met with, conferred with or in any way discussed with the consultant any part of the project without prior approval of the Director, the process shall immediately cease, the contract terminated and a new consultant selected. In addition the applicant shall pay to the County an additional fee equal to 30% of the cost of preparing the EIR as a penalty.
- (H) The Planning & Development Services Department shall review the submitted documentation and determine whether it meets all requirements of CEQA and Section 8 of these Rules.
- (I) There may be situations where the County and the project would benefit in preparing a CEQA document under a partnership with another agency, especially where another agency also has approval rights to the project, which may be referred to as being "co – lead". This is a decision left to the Director.
- (J) In the event that the County elects to be "co-lead", every effort will be made to make this an effective and efficient partnership. However in the event of a dispute that cannot be resolved in a timely manner, the Director has final authority to move the project forward. In this event, the project report to the Commission shall recite the issues of dispute.
- (K) In the preparation of a CEQA document the Director may allow the applicant to prepare certain technical documents (i.e. traffic study) that are then submitted to the primary consultant for review. In the event the technical study does not meet the standards of the County or the Primary CEQA consultant the applicant may be allowed to revise the technical study or the Director may cause the technical study to be done by the primary consultant. At all times the Director has the final authority to make such determinations.

- (L) The Planning & Development Services Department will coordinate the CEQA document preparation with the applicant and other County Departments. This may include the review of “screen check” drafts if determined appropriate or necessary by the Director.

SECTION 10: PUBLIC INSPECTION

All final reports or final documents filed pursuant to these Rules shall be available for public inspection and copies may be purchased at the rate set by the Planning & Development Services Director.

SECTION 11: FEES

All reports or documents filed in pursuant to these Rules shall be subject to the fees authorized by County Ordinance(s).

- (A) When the EIR is prepared by a consultant under contract to the County, the Applicant shall pay a fee to the County of Imperial established by County Ordinance and Section 9 of these Rules.
- (B) Large projects may require the hiring of an independent, third-party consultant acceptable to and directed by the County Planning & Development Services Department to evaluate the suitability of the environmental documentation submitted. The Director shall have the discretion to determine when a project would need this County-retained consultant on a case-by-case basis and be approved by the Board of Supervisors. The cost of this third party consultant shall be borne by the Applicant.
- (C) All projects shown to have a “T/M” billing rate shall deposit the amount specified within County Ordinance 90901.03 at the time of application and shall be billed by the Department on a monthly basis. At any time the billing exceeds the deposit, or the Department has not received payment within 20 days of billing, the Department shall cease processing the application until the funds are provided to maintain initial deposit limits.

Section 12: COUNTY AS A RESPONSIBLE AGENCY

To assure that the County is properly involved and responsive to any environmental document being prepared by a “non-county” agency that may however affect the County, the following procedures are herewith established:

- (1) The Planning & Development Services Department by virtue of being the “local” planning agency and the “officially” designated County environmental compliance Department and by virtue of its expertise in the CEQA process shall be the primary recipient of all CEQA/NEPA notices.

- (2) The Planning & Development Services Department shall be the “coordinator” for all responses to NOPs (Notice of Preparations) and/or responses to Draft Environmental Impact Reports (EIRs) received by the County. This shall not preclude any department from responding to any such notice, however a copy of such response shall be provided to the Planning & Development Services Department.
- (3) If the Planning & Development Services Department determines that a project is a “major project” or a project of “significance” or a “controversial project”, the Planning & Development Services Department shall present such a project/response to the Board of Supervisors, after soliciting input from the other County Departments.
- (4) Any receipt of a NOP or request for response to a DEIR to the Planning & Development Services Department, along with a response by the Department, shall be copied to each Supervisor, the County Executive Office, County Counsel, and any other department determined applicable.

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