

Environmental Appeals Draft Code Language September 24, 2013

112.0310 Notice of Right to Appeal Environmental Determination

In accordance with Chapter 12, Article 8, Division 2, the Development Services Director implements CEQA and the State CEQA Guidelines within the City of San Diego. While not required by CEQA, the City requires the posting of a Notice of Right to Appeal Environmental Determination for activities that are determined to be subject to CEQA.

- (a) A Notice of Right to Appeal Environmental Determination shall be posted for an environmental determination in accordance with the following:
- (1) A determination ~~made by the City Manager~~ that a project is exempt from CEQA pursuant to a categorical exemption or that an activity is covered by the general rule, as defined by State CEQA Guideline section 15378, is exempt from CEQA in accordance with State CEQA Guidelines sections 15061(b)(2), or (3), and (5), except where such determinations are made by the City Council; and
 - (2) A determination that a project is exempt from CEQA pursuant to a statutory exemption, except where such determination is made by the City Council; and
 - (3) ~~An environmental determination~~ A decision to adopt or certify an environmental document associated with a project, as defined by State CEQA Guidelines section 15378, that the City Manager approves or decides to carry out without a public hearing in accordance with his powers under City of San Diego Charter section 28, including environmental documents for projects decided at a Process Two decision making level.
- (b) ~~The Director is not required to post a~~ A Notice of Right to Appeal Environmental Determination is not required for those projects ~~deemed statutorily exempt in accordance with State CEQA Guidelines, Article 18, commencing with Section 15260~~ the following:
- (1) Activities determined to be “not subject to CEQA” pursuant to CEQA Guidelines Section 15060;
 - (2) Projects with an environmental document subject to Hearing Officer or Planning Commission action to adopt or certify; and
 - (3) Projects with an environmental determination subject to City Council approval.
- (c) The Notice of Right to Appeal Environmental Determination shall include:
- (1) An identification of the project, including its common name where possible and its location;
 - (2) A brief description of the project;

- (3) A statement regarding the type of *environmental determination* ~~and~~;
 - (4) A brief statement to support the reasons for the *environmental determination*, including citation to applicable State CEQA Guidelines or statutes; and
 - (5) The date of notice and a brief statement indicating the time for filing an appeal in accordance with Section 112.0520(b).
- (d) The Notice of Right to Appeal Environmental Determination shall be posted on the date of *environmental determination* as follows:
- (1) at At the City of San Diego, Development Services Department at in a location easily accessible to the public; and
 - (2) On the City of San Diego website.
- (e) The Notice of Right to Appeal Environmental Determination shall also be distributed on the date of *environmental determination* via electronic mail (or by U.S. mail if electronic mail is unavailable) as follows:
- (1) To the Council Office for the Council District in which the project is proposed;
 - (2) To the officially recognized community planning group, if any, that represents the area in which the project is proposed; and
 - (3) To any person who has submitted a written request for notification of the proposed *development* to the City staff person named in the Notice of Future Decision.
- (f) The Notice of Right to Appeal Environmental Determination shall remain posted in accordance with Section 112.0310(d) for a period of 15 the 10 business days that an appeal of the *environmental determination* may be filed in accordance with Section 112.0520(b).

§112.0511 No Development During Appeal Period

Development authorized by a permit, map, or other matter may not occur before the *date of final action*, except that action necessary to address an emergency requiring immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services can proceed as necessary to stabilize the emergency.

112.0520 Environmental Determination Appeals

- (a) Persons Who Can Appeal

Notwithstanding other provisions of this Code, any person may appeal an *environmental determination* not made by the City Council.

(b) Time for Filing an Appeal

An application to appeal a decision described in Section 112.0520(a) an *environmental determination* shall be filed in the Office of the City Clerk as follows:

(1) ~~within~~ Within 10 *business days* from the date of the posting of the Notice of Right to Appeal Environmental Determination; or

(2) Within 10 *business days* from the date of a decision made by a Hearing Officer or the Planning Commission to adopt or certify an environmental document.

(c) Scheduling Appeal Hearings. The appeal hearing before the City Council shall be held, or the City Clerk shall set a date for the appeal hearing, no later than 30 calendar days after the date on which the application for an appeal is filed. The appeal hearing shall be noticed in accordance with Section 112.0308.

(d) Power to Act on Appeal. The City Council shall consider the appeal ~~and shall, by a majority vote~~ as follows:

(1) Deny the appeal by majority vote, approve the *environmental determination* and adopt the CEQA findings and statement of overriding considerations of the previous decision-maker, where appropriate; ~~or~~

(2) Grant the appeal by majority vote and set aside the *environmental determination*, in accordance with Section 112.0520(e); or

(3) In the case of a tie vote, the *environmental determination* shall be considered disapproved.

(e) If the City Council grants the appeal under Section 112.0520(d)(2):

(1) The lower decision-maker's decision to approve the project shall be held in abeyance. The City Council shall retain jurisdiction to act on the revised environmental document and associated project at a subsequent public hearing.

(2) The Development Services Director shall reconsider the *environmental determination* in accordance with Section 128.0103 and prepare a revised environmental document as appropriate, in consideration of any direction from the City Council.

- (3) At a subsequent hearing, the City Council shall again consider the *environmental determination* and associated projects, and take action in accordance with Section 112.0520(e)(3)(A), (B), ~~or (C)~~, **or (D)** to:
- (A) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; and affirm the previous decision to approve the associated project;
 - (B) Certify or adopt the environmental document; adopt CEQA *findings* and statement of overriding considerations as appropriate; condition and approve the associated project as modified; ~~or~~
 - (C) Find that the environmental document is insufficient, in which case the document shall not be certified. The associated project shall be denied and the decision shall be deemed the final administrative action; **or**
 - (D) **In the case of a tie vote, the *environmental determination* shall be considered disapproved.**

§113.0103 Definitions

Abutting property through Encroachment [No change.]

Environmental determination means a decision by any non-elected City decision maker, to certify an environmental impact report, adopt a negative declaration or mitigated negative declaration, or to determine that a project is not subject to the California Environmental Quality Act (CEQA), under State CEQA Guidelines section 15061(b) ~~(2) or (3)~~.

Environmentally sensitive lands through Yard [No change.]

§128.0202 ~~Incorporation of CEQA by Reference~~ Actions That Require Compliance with CEQA

- (a)** Except as otherwise provided, CEQA and this article shall apply to the following discretionary activities located within the City of San Diego:
- ~~(a)~~ **(1)** Activities directly undertaken by the City such as construction of *streets*, bridges, or other public *structures* or adoption of plans and zoning regulations;
 - ~~(b)~~ **(2)** Activities financed in whole or in part by the City of San Diego; and
 - ~~(c)~~ **(3)** Private activities that require approval from the City of San Diego such as adoption and amendment of *land use plans* and the *Local Coastal Program*, zoning and rezoning actions, *development* agreements, *subdivision* activities, *development* and use permits, and variances.

(b) An activity is not subject to CEQA if the activity does not involve the exercise of discretionary powers by a public agency; if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or if the activity is not a project as defined in Section 15378.

§128.0203 Actions Exempt from CEQA

An action or activity may be exempt from CEQA if it meets any of the following conditions:

- (a) ~~The activity is not a project as defined in the State CEQA Guidelines, Section 15378;~~
- (b) (a) The project has been granted an exemption by statute (e.g. State CEQA Guidelines, Article 18, commencing with Section 15260) or by categorical exemption (State CEQA Guidelines, Article 12.5, commencing with Section 15191, and Article 19, commencing with Section 15300).
 - (1) ~~CEQA exempts ministerial actions by statute. City approval decided in accordance with Process One is a ministerial action, including issuance of a *construction permit*. The following are *construction permits*: Building Permits, Plumbing Permits, Electrical Permits, Mechanical Permits, Grading Permits, Public Right-Of-Way Permits, Demolition Permits, Removal and Relocation Permits, and Sign Permits.~~
 - (2) ~~Activities within the City of San Diego that typically are exempt by statute or categorical exemption from CEQA are provided in the CEQA Administrative Guidelines of the Land Development Manual.~~
- (c) (b) The activity is covered by the general rule in the State CEQA Guidelines, Section 15061(b)(3), that states that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

§128.0207 Review for Exemption from the Requirements of CEQA

- (a) [No change.]
- (b) A determination by the Development Services Director that a project is exempt from CEQA, as described in State CEQA Guidelines section 15061(b) (2) or (3), shall be subject to the appeal procedures in section 112.0510.

§128.0208 Determination of Type of Environmental Document

- (a) After an application for a discretionary permit or action is *deemed complete*, the ~~Planning and Development Review~~ Development Services Director shall take one of the following actions:
 - (1) through (3) [No change.]

- (b) [No change.]
- (c) The ~~Planning and Development Review~~ **Development Services** Director shall notify the *applicant* of the scope of the required environmental document and the additional information required, if any, in accordance with the State CEQA Guidelines, Section 15060.

§128.0209 When a Previous Environmental Document May Be Used

- (a) A previously certified EIR or Negative Declaration, including any supplement or addendum, may be used when changes in the project or circumstances have occurred, unless the ~~Planning and Development Review~~ **Development Services** Director determines that one or more of the situations identified in the State CEQA Guidelines, Section 15162, exist.
- (b) If a previously certified document is to be used, the ~~Planning and Development Review~~ **Development Services** Director shall provide the decision-making body with an explanatory cover letter stating that none of the conditions specified in the State CEQA Guidelines, Section 15162, exists.
- (c) [No change.]

§128.0210 When a National Environmental Policy Act (NEPA) Document or Joint Document May Be Used

- (a) NEPA applies to projects that are carried out, financed, or approved in whole or in part by federal agencies. If a project will require compliance with both CEQA and NEPA, the ~~Planning and Development Review~~ **Development Services** Director should use the NEPA document rather than preparing a separate CEQA document if the following two conditions exist:
 - (1) through (2) [No change.]
- (b) If the NEPA document would not be prepared by the federal agency by the time the City of San Diego would need to consider an environmental document consistent with this article, the ~~Planning and Development Review~~ **Development Services** Director should try to prepare a combined ~~NEPA-11-CEQA~~ **NEPA/CEQA** document. Preparation of this joint environmental document shall involve the federal agency to avoid the need for the federal agency to prepare a separate document for the same project.