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I. Purpose of Guidelines and Regulatory Authority

The purpose of these Local CEQA Guidelines is to provide the City and anyone intending to carry out a project within the City of Orange 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 or CEQA Statutes, 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 authority to adopt these Local CEQA Guidelines is granted under Public Resources Code Section 21082, the California Environmental Quality Act, which requires public agencies to adopt local environmental review guidelines.

A copy of the CEQA Statutes and CEQA Guidelines are on file at the City of Orange Community Development Department. The primary responsibility for implementing the provisions of CEQA and these Local CEQA Guidelines for the City of Orange shall be with the Community Development Department.

II. Definitions

California Environmental Quality Act (CEQA) means Public Resources Code, Sections 21000 et seq., as amended.

CEQA Guidelines means the “Guidelines for Implementation of the California Environmental Quality Act”, prepared by the State Office of Planning and Research. (Note: This document was prepared using the 2005 CEQA Guidelines.)

All definitions contained in CEQA and the CEQA Guidelines shall also apply to this document, including the following:

Lead Agency means the public agency which has the principal responsibility for carrying out or approving a project (CEQA Guidelines Section 15367).

Decision-making Body means any person or group of people within a public agency permitted by law to approve or disapprove the project at issue (CEQA Guidelines Section 15356).

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 (CEQA Guidelines Section 15357).
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 (CEQA Guidelines Section 15369).

Approval means the decision by a public agency that commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations and ordinances (CEQA Guidelines Section 15352). A project is deemed to be finally approved by the Planning Commission at the close of the appeal period (Chapter 17.08.050(d) of the OMC), and by the City Council upon final adoption of a resolution or ordinance (i.e. after the second reading of the ordinance), as the case may be (Section 2.04.250(c) of the OMC).

III. Environmental Review Process

A. Community Development Department. The primary responsibility for implementing the provisions of CEQA as specified in the State CEQA Guidelines and these environmental review guidelines shall be with the Community Development Department. The Community Development Director or designee shall be responsible for coordinating CEQA compliance for private development projects, and for projects initiated or authorized by other City departments (in cooperation with that department). Community Development Department staff responsibilities include the following:

1. Review proposed activities and determine the applicability of CEQA and these guidelines.
2. Coordinate internal review of environmental documentation with other City Departments, as necessary.
3. Coordinate the preparation and processing of environmental documentation through the public review and decision-making process.
4. Coordinate the preparation of required noticing and circulation of environmental documents, including the circulation of documents through the State Office of Planning and Research or other agencies with reviewing and/or approving authority.
5. File Notices of Determination (NOD), and Fish and Game Fees or Certificates of Fee Exemption.
6. Maintain all environmental records such as NODs, Notices of Preparation (NOP), Initial Studies, Negative Declarations (ND), Mitigated Negative Declarations (MND), and Environmental Impact Reports (EIR) and related documents.
7. For City projects, determine environmental scope of work, schedule and budget; coordinate preparation of environmental documents and required noticing; retain
environmental consultants if necessary; and oversee and direct consultant work products.

8. Assume the responsibility of the Mitigation Monitoring Manager as described in the City’s Mitigation Monitoring Program handbook (under separate cover). Coordinate with other City departments regarding the adequacy and monitoring of mitigation measures.

9. Coordinate the review and comment upon environmental documentation circulated by other cities and agencies.

10. Update the Local CEQA Guidelines and internal procedures as necessary to ensure consistency with the statute and the State CEQA Guidelines. Revisions to internal procedures for implementing these Local CEQA Guidelines shall be made at the discretion of the Community Development Director.

B. Determining the Applicability of CEQA. The first step in the environmental review process is to determine whether an activity is subject to environmental review according to CEQA. CEQA applies to governmental action, including any activity directly undertaken by a public agency; any activity financed in whole or in part by a public agency; and any activity requiring approval by a public agency.

1. Activities Not Subject to Environmental Review.

An activity is not subject to CEQA if the activity does not result in physical changes to the environment; does not involve discretionary action by the City; or is not a “project” as defined by CEQA (CEQA Guidelines Section 15060, CEQA Guidelines Section 15378).

City discretionary activities include, but are not limited to, public works construction; enactment and amendment of zoning ordinances; the adoption or amendment of a General Plan or its elements; or issuance of a lease, permit, license, certificate or other entitlement for use (e.g. administrative adjustments, temporary use permit, variances, minor site plan review, major site plan review, conditional use permit, demolition review, parcel maps, and tentative tract maps).

Activities that are “Ministerial” (not discretionary) as defined in the CEQA Guidelines are not subject to CEQA or these local guidelines. Ministerial is a term describing a public agency decision that involves “little or no personal judgment by the public official as to the wisdom or manner of carrying out the project.” Ministerial decisions involve only the use of fixed standards or objective measurements and the public official cannot use subjective judgment in deciding whether or how the project should be carried out. City ministerial actions include, but are not limited to, issuance of building permits, certificates of occupancy, final subdivision maps, demolition permits that do not trigger “demolition review”,
outdoor dining permits, encroachment permits, haul permits, grading permits and business licenses.

C. Projects that are Exempt from Environmental Review. Once it has been established that an activity is a project and is subject to CEQA, the project shall be reviewed to determine if it is statutorily or categorically exempt from CEQA. The criteria for determining whether a project is exempt from environmental review are identified in Articles 18 and 19 of the State CEQA Guidelines. The City’s Community Development Director (or designee) has the authority to determine whether a project reasonably falls within an exemption category and meets the intent of the Guidelines.

1. Statutory Exemptions. Statutory exemptions are exemptions established by the State Legislature for specific types of projects, and are exempt from CEQA regardless of their environmental impacts. Projects that qualify for a statutory exemption are discussed in CEQA Guidelines Article 18 (included as Appendix A in these Guidelines), and do not require further environmental review. Those projects include but are not limited to items such as feasibility and planning studies, general plan time extensions, certain types of affordable housing projects, certain types of family day care homes, and emergency projects.

2. Categorical Exemptions. Categorical exemptions are categories or classes of projects that are exempt from environmental review requirements because they have been found by the State’s Secretary of Resources to be generally incapable of resulting in significant environmental effects. Projects that qualify for a categorical exemption are discussed in CEQA Guidelines Article 19 (included as Appendix B of these Guidelines), and do not require further environmental review. There are over 30 classifications of categorical exemptions that include such activities as minor additions to existing buildings, construction of new small structures, and conversion of small structures from one use to another (if only minor exterior building modifications are involved).

Exceptions to Categorical Exemptions. Pursuant to CEQA Guidelines Section 15300.2, there may be instances where unusual circumstances cause a project that generally qualifies for a categorical exemption to be subject to more extensive environmental review. A project shall not be categorically exempt if:

a. The project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law;

b. The project would result in significant cumulative impacts;

c. There is a reasonable possibility that the project could result in significant impacts to the environment;

d. The project would result in damage to scenic resources within a designated state scenic highway;

e. The project is located on a hazardous waste site that is included on any list compiled pursuant to Section 65962.5 of the Government Code; or
f. The project may cause a substantial adverse change in the significance of a historical resource.

3. “General Rule” Exemptions. Where it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment, the activity is not subject to CEQA or these guidelines. This is discussed in CEQA Guidelines Section 15061(b3).

4. Completing and Filing a Notice of Exemption. Upon approval of an exempt project, a Notice of Exemption (NOE) may be filed (emphasis added), at the discretion of the Community Development Director or designee.

Upon determining that a project is exempt from environmental review and that a NOE will be filed, a NOE shall be prepared in compliance with CEQA Guidelines Section 15062-15065. The NOE shall include a description of the project, a finding that the project is exempt from CEQA, a citation to the State CEQA Guidelines or statute under which the project is exempt, and a statement of reasons to support the finding. The NOE shall be filed with the Orange County Clerk after project approval.

In accordance with the State CEQA Guidelines, the Orange County Clerk posts the NOE, and returns it to the City for the administrative record after a 30-day posting period. Filing the NOE with the Orange County Clerk starts a 35-day statute of limitations for legal challenge to the City’s determination that the project is exempt from environmental review. If a NOE is not filed, the statute of limitations for legal challenge is 180 days in accordance with the State CEQA Guidelines.

D. Initial Study Process. If a project is subject to CEQA and is not statutorily or categorically exempt, an Initial Study checklist is completed in accordance with the requirements established in CEQA Guidelines Section 15063. The Initial Study is a preliminary analysis (typically presented as a series of checklist questions and responses organized by environmental issue) that is used to determine whether a project may have a significant effect on the environment, and whether the environmental effects can be reduced to less than significant levels. This information in turn determines the type of environmental documentation that is required. The process for completing an Initial Study is as follows:

1. During preliminary review and prior to preparation of the Initial Study, Community Development Department staff (in consultation with representatives from other City departments) will evaluate the project and determine whether additional technical information is required to complete the Initial Study and make a determination regarding the appropriate environmental document. Community Development Department staff will communicate this determination and provide a detailed list of additional information needs to the Applicant in writing within 30 days after accepting the application in accordance with the Permit Streamlining
Act. Staff will obtain the appropriate technical information from the Applicant prior to accepting the application as complete.

2. Community Development Department staff will prepare or cause preparation of the Initial Study, evaluate the potential for the project to cause a significant effect on the environment, and makes a determination as to the “significance” of project impacts. The City’s Initial Study checklist is attached as Appendix C. A written analysis shall be provided to support a “potentially significant impact”, “potentially significant unless mitigation incorporated”, “less than significant”, or “no impact” conclusion for each Initial Study checklist question. The written analysis shall provide a reasoned evaluation of potential impacts, and its conclusions shall be based on facts, reasonable assumptions based on facts, and/or expert opinion supported by facts.

3. Community Development Department staff will provide the Initial Study checklist and other technical information to representatives from appropriate City departments for coordination and concurrence prior to its release for public review. Each department is responsible for evaluating the Initial Study (as related to their area of expertise), and recommending project modifications or other measures (as appropriate) that will address environmental concerns. Community Development Department staff shall be responsible for inter-departmental coordination and overall compliance with CEQA requirements.

4. Based on preliminary project review and/or the evaluation in the Initial Study, Community Development Department staff will determine whether a ND can be issued for the project or if an EIR is required. Staff shall determine whether an ND or EIR will be prepared within 30 days after accepting the application as complete (CEQA Guidelines Section 15102).

5. Community Development Department staff will prepare a ND if impacts are determined to be “less than significant” and will recommend project modifications and mitigation measures that would reduce or eliminate significant environmental effects if applicable. A MND shall be prepared if project impacts are determined to be “less than significant” with the implementation of mitigation measures. An EIR shall be prepared if project impacts are determined to be “potentially significant” or “significant”.

E. Negative Declaration Process. The negative declaration process is used when an initial study indicates that a project will result in less than significant environmental impacts. There are two types of NDs: a (non-mitigated) ND and a MND. The ND process is the same for both types of documentation, and requires notification and public review as discussed in CEQA Guidelines Sections 15072-15073. No action may be taken on a project until completion of the ND review process.

1. Negative Declaration. When no significant effects are identified through the Initial Study process, a ND is prepared in accordance with CEQA Guidelines Sections
15070-15071. A ND is a document that contains a project description, the location of the project, the name of the project proponent, a specific finding that states that the project will not have significant effects on the environment, and an attached copy of the Initial Study documenting reasons to support the finding.

2. Mitigated Negative Declaration. When significant effects are identified, but can be reduced to a less than significant level or eliminated by requiring compliance with mitigation measures, a mitigated ND is prepared in accordance with CEQA Guidelines Sections 15070-15071. Mitigation measures are actions identified through the Initial Study process and are designed to avoid, minimize, limit, rectify, repair, reduce or compensate for a project’s impacts to the environment, such that impacts are “less than significant”. Mitigation measures shall identify what action is required, when implementation of the mitigation measure is required, how compliance is monitored, and who is responsible for implementing, monitoring and/or coordinating the monitoring of the mitigation measure. Mitigation measures are required to be fully enforceable through permit conditions, agreements, or other measures.

A MND contains the same components as a ND (described above), with the addition of a mitigation monitoring report. In general, a MND rather than a full EIR will be prepared when potential impacts clearly (emphasis added) can be mitigated.

a. Mitigation Monitoring Program. The City adopted a Mitigation Monitoring Program (1991) in compliance with Public Resources Code Section 21081.6 to provide guidelines for monitoring mitigation measures. The City’s Mitigation Monitoring Program requires that a Mitigation Monitoring Report be prepared for any project for which an MND or an EIR is prepared, where mitigation measures are imposed on the project (CEQA Guidelines Section 15097). The Mitigation Monitoring Report must be adopted by the decision-making body at the time of project approval.

Community Development Department staff shall be responsible for the preparation and management of the Mitigation Monitoring Report, including assigning monitoring responsibilities for individual mitigation measures to the appropriate City department, coordinating with the project proponent and the appropriate City departments to verify that individual mitigation measures are implemented, and managing the City’s mitigation monitoring administrative record. Refer to Appendix D, for the Mitigation Monitoring Sample Format, and also reference the City of Orange Mitigation Monitoring Program (under separate cover).

3. Notice of Intent and Public Review for a Negative Declaration. Staff shall prepare and file a Notice of Intent (NOI) to adopt a ND or MND in compliance with CEQA Guidelines Section 15072-15073. The NOI shall be filed with the Orange
County Clerk at least 20 days prior to the adoption of the ND or MND to allow for a 20-day public review period. The NOI shall contain a description of the project; the project location; the starting and ending dates for the public review period; contact name and address (including email address) where written comments can be submitted; the date, time and place of any scheduled public meetings or hearings on the project; and the address where copies of the proposed ND or MND are available for public review.

The NOI shall be posted at the Orange County Clerk’s Office, shall be mailed to all organizations and individuals who previously requested the notice in writing, and shall be otherwise made available to the public by all of the following three methods:

i. Publication in a local newspaper;
ii. Onsite posting; and
iii. Direct mailing to owners and occupants of properties within 300 feet of the project site. (Exception: In the case of a General Plan Amendment or zoning ordinance amendment that does not involve a map change to a specific property, direct mailing and onsite posting is not required.)

The NOI and the ND or MND shall be distributed (via any method of transmittal that provides a record of receipt) to all responsible agencies, trustee agencies and any other agencies with jurisdiction by law over resources affected by the project.

If a state agency is a responsible or trustee agency, or if the project is a project of “statewide, regional or area wide significance” (as defined in CEQA Guidelines section 15206), the public review period shall be 30 days in accordance with CEQA Guidelines Section 15072-15073, and an appropriate number of copies of the ND or MND and a State Clearinghouse transmittal form shall be submitted to the State Office of Planning and Research (State Clearinghouse) for distribution to state agencies.

The ND or MND and comments received during the public review period shall be forwarded to the recommending body and the final decision-making body for consideration prior to a decision on the project (CEQA Guidelines 15074). The recommending and final decision making bodies are defined in Section VI of these Guidelines.

The NOI and required public hearing notices should be combined whenever possible. The ND or the MND must be completed and approved within 180 days from the date when the application was accepted as complete (CEQA Guidelines Section 15107).

4. Notice of Determination. Within five working days of the final approval of a project for which a ND or MND is prepared, a NOD shall be prepared, in accordance with CEQA Guidelines Section 15075, and filed with the Orange
County Clerk. When the project requires discretionary approval from a state agency and the ND or MND has been submitted to the State Office of Planning and Research, the NOD shall also be filed with the State Office of Planning and Research in accordance with Section 15075 of the State CEQA Guidelines.

The NOD shall contain the project name, project location, project description, date of project approval, a determination as to whether the project will have a significant effect on the environment, and the address where the record of project approval is available for public review.

The Orange County Clerk and/or the State Office of Planning and Research files the NOD and returns it to the City after a 30 day posting period. Filing the NOD starts a 30-day statute of limitations for legal challenges to the approval. If an NOD is not filed, the statute of limitations for legal challenge is 180 days (CEQA Guidelines Section 15075, 15112).

5. Compliance with California Fish and Game Code Section 711.4(d)(2). If a ND or MND is prepared for a project, and (based on the associated Initial Study) the City makes a finding that the project would not have any adverse impact to “wildlife”, then a Certificate of Fee Exemption shall be filed with the Orange County Clerk concurrently with the NOD, in compliance with California Fish and Game Code Section 711.4 (d)(2). Section 711.2 of the California Fish and Game Code defines “wildlife” as all wild animals, birds, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.

If a ND or MND is prepared for a project and the associated Initial Study shows that the project would have any adverse impact to “wildlife”, the applicant shall provide a cashier’s check to the City, payable to the Orange County Clerk, in an amount specified in California Fish and Game Code Section 711.4(d) (2). The City shall provide the cashier’s check to the Orange County Clerk concurrently with the NOD.

F. Environmental Impact Report Process. An EIR is required when it is determined through preliminary review and/or the Initial Study process that a project may have a significant effect on the environment. The Applicant may retain an environmental consultant to prepare the EIR, or staff may retain an environmental consultant directly (cost to be billed to the Applicant), per Section VIII of these Guidelines. No action may be taken on the project until completion of the EIR process. The process for preparing an EIR occurs as follows:

1. Notice of Preparation and Public Comment. To begin the EIR process, a NOP shall be prepared. The NOP shall state that an EIR will be prepared for the project and establish a 30 day public comment period during which written comments from agencies and the public will be accepted. The NOP shall contain a description of the project, project location, a description of the probable
environmental effects of the project, the starting and ending dates for the public comment period, the date, time and location of any scheduled public “scoping” meetings for the project, and the address where copies of the project’s Initial Study (if prepared) are available for public review. (An Initial Study is not a required component of the NOP process, but may be prepared at the discretion of the Community Development Director or designee as a public information tool, or as a means of focusing the topics addressed in the EIR.)

The NOP shall be distributed (via any method of transmittal that provides a record of receipt) to all responsible agencies involved with approving or funding the project, trustee agencies, and agencies with jurisdiction by law over resources affected by the project. If a state agency is a responsible or trustee agency, or if the project is a project of “statewide, regional or area wide significance” (as defined in CEQA Guidelines Section 15206), the appropriate number of copies of the NOP and a State Clearinghouse transmittal form shall be sent to the Office of Planning and Research (State Clearinghouse) for distribution to state agencies. In addition, for certain projects, consultation with water agencies is required during the NOP process (CEQA Guidelines Section 15083.5).

The NOP shall also be direct mailed to adjacent cities, the County of Orange, any person who has requested (in writing) to be notified of the project review, and shall be otherwise made available to the public by all of the following three methods:

i. Publication in a local newspaper;
ii. Onsite posting; and
iii. Direct mailing to owners and occupants of properties within 300 feet of the project site. (Exception: In the case of a General Plan Amendment or zoning ordinance amendment that does not involve a map change to a specific property, direct mailing and onsite posting is not required.)

2. Scoping Meetings. Scoping meetings shall be held for “projects of statewide, regional or area wide significance” as described in CEQA Guidelines Section 15082, CEQA Guidelines Section 15206. Scoping meetings are not required by CEQA for projects that are not “projects of statewide, regional or area wide significance”, but may be helpful to the project’s public participation process. Also, if held early in the process, scoping meetings can be used to identify and address issues of public concern. Scoping meetings should be held during the public comment period established for the NOP and noticing should be combined with the NOP whenever possible.

3. Draft EIR. Preparation of the draft EIR shall appropriately address comments received as responses to the NOP. The required contents of the draft EIR are described in CEQA Guidelines Article 9, and include an executive summary, description of the existing setting, environmental impact analysis including direct,
indirect and cumulative impacts, mitigation measures, and an alternatives analysis. Further, CEQA Guidelines Article 10 provides helpful guidance in writing and/or preparing EIRs. If an EIR is prepared by the Applicant and/or an environmental consultant, prior to release for public review the Community Development Department shall review the EIR, coordinate with other City departments on the adequacy of the document and the appropriateness of mitigation measures, and direct revisions as necessary to ensure that the analysis is adequate, objective, and reflects the City’s independent judgment.

4. Notice of Completion, Notice of Availability, and Public Review for a Draft EIR. After completion of the draft EIR, a Notice of Completion (NOC) and the appropriate number of copies of the EIR shall be filed with the State Office of Planning and Research in accordance with CEQA Guidelines Section 15085 to begin the public review period. The State Clearinghouse transmittal form serves as the NOC.

A public Notice of Availability (NOA) for public review of the draft EIR shall be prepared and distributed at the same time the NOC is sent, in accordance with CEQA Guidelines Section 15087. The NOA shall include a description of the project, project location, start and end dates for the public review period during which written public comments will be accepted, contact name and address (including email address) where written comments can be submitted, address where copies of the EIR are available for public review, the date time and location for any scheduled public meetings or hearings, and a list of significant environmental effects anticipated to result from the project.

The NOA and the EIR shall be distributed (via any method of transmittal that provides a record of receipt) to all responsible agencies, trustee agencies, other agencies with jurisdiction by law over resources affected by the project, adjacent cities, and the County of Orange. If the project is a project of “statewide, regional or area wide significance” (as defined in CEQA Guidelines Section 15206), the NOA and the EIR shall also be distributed to affected transportation planning agencies (CEQA Guidelines Section 15086). In addition, for certain projects, water agencies consulted during the NOP process are also required to receive the NOA and EIR (CEQA Guidelines Section 15083.5).

The NOA shall be direct mailed to any person who has requested (in writing) to be notified of the project review, and shall be otherwise made available to the public by all of the following three methods:

i. Publication in a local newspaper;

ii. Onsite posting; and

iii. Direct mailing to owners and occupants of properties within 300 feet of the project site. (Exception: In the case of a General Plan Amendment or zoning ordinance amendment that does not involve
a map change to a specific property, direct mailing and onsite posting is not required.)

The NOA is filed with the Orange County Clerk to begin the public review period. The public review period for an EIR shall be a minimum of 45 days. The public review period may be 60 days at the discretion of the Community Development Director. Any requests to shorten the required review period must be made by the Community Development Director to the State Clearinghouse. The State Clearinghouse-established review period for state agencies and the general public review period for the EIR should be coordinated whenever possible.

5. Response to Comments. After completion of the draft EIR public review period, the City shall evaluate the comments received during the review period and prepare written responses. The responses to comments must address significant environmental issues raised by the public and present a good faith reasoned response.

6. Final EIR. After completion of the draft EIR public review period, a final EIR shall be prepared in accordance with CEQA Guidelines Sections 15089. Required contents of a final EIR are specified in Section 15132, and consist of the draft EIR (or a revision of the draft undertaken in response to public comments); public comments received during the review period; and the City’s response to comments.

The final EIR shall be forwarded to the recommending and final decision-making bodies (e.g. Planning Commission, City Council) as defined in Section IV of these Guidelines for consideration prior to certifying or recommending certification of the EIR. In addition, the final EIR is required to be provided to public agencies that commented on the EIR (Public Resources Code 21092.5) via any method of transmittal that provides a record of receipt, and shall also be made available to the general public for review at least 10 days prior to a certification of the final EIR.

Prior to approving the project, the final decision-making body must consider the information presented in the final EIR, certify the EIR (CEQA Guidelines Section 15090), and make certain findings for each significant impact identified in the final EIR (CEQA Guidelines Section 15091). When the lead agency approves a project that will result in significant unavoidable impacts, a Statement of Overriding Considerations (CEQA Guidelines Section 15093) must be prepared. The Statement of Overriding Considerations identifies specific reasons that support the City’s approval of the project (despite its environmental consequences) and must be included in the public record of project approval along with the findings.

The final EIR must be completed and certified within one year from the date when the application was accepted as complete (CEQA Guidelines Section 15108.)
7. Notice of Determination. Within five working days of the approval of a project for which an EIR is prepared, a NOD shall be prepared, in accordance with CEQA Guidelines Section 15904, and filed with the Orange County Clerk. The NOD shall also be filed with the State Office of Planning and Research. The NOD and compliance with California Fish and Game Code Section 711.4(d)(2) shall be carried out in accordance with the procedures outlined in Section III(E)(4) and (5) of these Local CEQA Guidelines.

IV. Historical Resources and Environmental Review

A. Identification of Historical Resources; Applicability. CEQA Statutes § 21084.1 defines a “historical resource,” as “a resource listed in, or determined eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Public Resources Code (PRC) Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of PRC Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant.”

The above-referenced subdivisions of the PRC read as follows:

§5020.1(k) "Local register of historical resources" means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

§5024.1 (g) A resource identified as significant in a historical resource survey may be listed in the California Register if the survey meets all of the following criteria:

1. The survey has been or will be included in the State Historic Resources Inventory.

2. The survey and the survey documentation were prepared in accordance with State Office of Historic Preservation procedures and requirements.

3. The resource is evaluated and determined by the State Office of Historic Preservation to have a significance rating of Category 1 to 5 on DPR Form 523.

4. If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.
The City of Orange Historic Building Survey was originally prepared in 1982, and subsequently updated in 1992. This survey served as the informational basis for the Old Towne Orange National Register nomination. The Plaza Historic District was placed on the National Register on March 19, 1982, and the Old Towne Orange Historic District on July 11, 1997. On these dates, these Districts were also placed on the California Register of Historical Resources. Therefore, the California Register listed historic districts are historical resources for purposes of CEQA.

Without limiting the foregoing, historical resources in the City of Orange have historic district overlay zoning defined in Orange Municipal Code Chapter 17.17 Historic Districts (§ 17.17 et seq.), hereinafter “local historic district”. The local historic district as defined in the OMC is presumed to be a historical resource for purpose of CEQA.

In addition, because the City’s Historic Building Survey also served as the informational basis for the Historic Preservation Element of the General Plan (which was updated in 1993 and adopted by resolution of the City Council), the Historic Building Survey constitutes a recognized list of historical resources within the City pursuant to PRC 5020.1(k), and structures that are identified as significant resources in the survey (i.e. any survey designation except “not contributing” (NC) and “not significant” (NS)), both within and outside of the local historic district and the National Register/California Register listed districts are presumed to be historical resources for purposes of CEQA.

Pursuant to CEQA Guidelines Section 15064.5(a)(4), the fact that a structure or other resource is not listed in or determined to be eligible for listing in the California Register or a local register does not preclude the City from determining that it may be a historical resource. If a structure is not identified as a historical resource in the City of Orange Historical Building Survey, but during the course of project review documentation is submitted to the City demonstrating the structure’s historical significance, a formal historical resource evaluation report shall be prepared by a qualified professional who meets the Secretary of Interior’s Professional Qualifications Standards for Historic Architecture, Architectural History, and/or History (36 CFR Part 61 Appendix A).

The historical resource evaluation report shall, at a minimum, describe architectural elements, conditions, alterations and additions, and include a photographic record and description of the structure and its context. The report shall address the age of the structure and evaluate its architectural and structural integrity. The report shall evaluate the historical significance of the structure, both individually and as a contributor to the City’s designated historic district(s), and shall ultimately make a determination as to whether the structure meets the definition of a historical resource as defined in CEQA Guidelines Section 15064.5.

Upon Community Development Director review and concurrence with the conclusions of the historical resource evaluation report supporting the historical significance of the property, the property shall be considered a historical resource for purposes of CEQA review.
B. **Impacts on Historical Resources; Design Standards.** Local CEQA Guidelines shall employ a combination of State CEQA Guidelines and local rules and regulations.

1. **Design Standards Authority**

Projects shall be judged for consistency with both the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the Old Towne Design Standards. The Old Towne Design Standards incorporate the Secretary of the Interior’s Standards for Rehabilitation and are more specific in nature; therefore, projects which are determined to be consistent with the Old Towne Design Standards are also deemed to be consistent with the Secretary of the Interior’s Standards for Rehabilitation.

   a. CEQA Guidelines § 15064.5 Determining the Significance of Impacts to Archeological and Historical Resources contains the following provision:

   “(b)(3) Generally, a project that follows the Secretary of the Interior’s Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.”

   b. Historic Preservation Design Standards for Old Towne (the “Old Towne Design Standards”) approved by City Council on June 13, 1995, adopted by City Council Resolution No. 8488 on July 11, 1995, revised by City Council Resolution No. 8996 on August 25, 1998, revised by City Council Resolution No. 9201 on December 14, 1999 incorporate the Secretary of the Interior’s Standards for Rehabilitation. The Old Towne Design Standards shall be used in assessing effects a rehabilitation project may have on historical resources.

   Rehabilitation projects that comply with both the Old Towne Design Standards and the Secretary of Interior’s Standards for Rehabilitation do not have a significant impact to historical resources. For projects involving preservation, restoration or reconstruction of historic buildings, the “Secretary of Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Restoring and Reconstructing Historic Buildings” continue to be the relevant guidance document for assessing effects.

2. **Substantial Adverse Change Defined**
CEQA Statutes § 21084.1 Effects on Historical Resources contains the following provision:

“A project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.”

CEQA Guidelines Section 15064.5(b)(1) states “Substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired”.

The significance of a historical resource is materially impaired when a project demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility or inclusion on the California Register, or its inclusion on a local register of historic resources pursuant to PRC 5020.1(k) or 5021.4(g) (CEQA Guidelines Section 15064.5(b)(2)).

3. City Application of Substantial Adverse Change

The City has determined that the following projects may involve substantial adverse changes to historical resources are not exempt from CEQA review.

a. The basic threshold for substantial adverse change to a historical resource under these Local CEQA Guidelines shall be a project which threatens loss or destruction of the qualities which caused original formation of the local historic district, listing in and/or determination of eligibility for listing in the National Register or California Register as determined by the Community Development Director. (Authority cited, 36 CFR § 60.15 Removing properties from the National Register).

As noted in the National Register of Historic Places Registration Form, the listing of the Old Towne Orange Historic District on the National Register is based on the remaining variety and high level of historic integrity of 1888 to 1940 residential and non-residential building types and architectural styles. The District maintains the historic atmosphere of Orange and the City’s founding, and reflects the lifestyle and community characteristics of agrarian Southern California during the late-19th and early-20th centuries.

Determinations about substantial adverse change to a historical resource should include consultation of the Old Towne Orange Historic District National Register of Historic Places Registration Form, as well as the Orange Historic Building Survey, both on file in the Community Development Department.
b. Thresholds for substantial adverse change under these Local CEQA Guidelines include any of the following. Projects meeting these criteria may have the potential for adverse impacts and shall not be exempt from CEQA.

i. Any demolition, destruction or relocation of a historical resource.

ii. Partial demolitions involving the removal of historical floor area, or an exterior wall that includes a distinctive character-defining historical architectural feature, of a historical resource.

iii. Alteration to property of a historical resource including exterior alterations, additions, new buildings, hardscape or landscape which does not clearly comply with the Secretary of Interior’s Standards for Rehabilitation and the Old Towne Design Standards.

iv. Alteration which removes existing exterior historic building material from a primary historical resource including but not limited to siding, windows doors, and related trim and does not replace these elements with in kind materials (emphasis added), or other appropriate materials as identified in Appendix B (Use of Appropriate Materials) of the Old Towne Design Standards.

v. Infill development within the boundaries of the Old Towne Orange Historic District, including the construction of new residential or non-residential structures that does not comply with the Secretary of the Interior’s Standards for Rehabilitation and the Old Towne Design Standards.

vi. Alterations to a non-historic resource or property located within the boundaries of the Old Towne Historic District, including exterior alterations, additions, or new buildings, which do not comply with the Old Towne Design Standards and are incompatible with the predominant streetscape and building pattern on the block on which it is located. The factors that shall be considered when determining incompatibility include bulk and mass, architectural articulation, and the placement and orientation of additions or accessory buildings on the site.

vii. Alterations or additions to a structure that is a historical resource involving a variation in the height or width that results in an incompatible change in the resources’ relationship to the predominant streetscape and building pattern on the block on which it is located. In addition to height and width, factors that
shall be considered when determining incompatibility include bulk and mass, architectural articulation, and the placement and orientation of additions on the site.

viii. Demolitions that adversely effect features of a property or objects associated with an event or person of significance to the history of the City that are determined to be a historical resource.

C. Exemptions

1. State Exemptions Article 19 of the State CEQA Guidelines identifies a number of categorical exemptions that may be applicable to projects involving historical resources, provided that the proposed activity does not have the potential to cause substantial adverse change. However, only one exemption applies specifically to restoration and rehabilitation activities associated with historical resources.

a. § 15331 Historical Resource Restoration/Rehabilitation states, “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), Weeks and Grimmer.”

2. City Application of Categorical Exemptions. The City has determined that the following activities reasonably fall within the exemption categories established by the State CEQA Guidelines. Determinations regarding the applicability of exemptions shall be made by the Community Development Director.

a. Demolition of non-historical building components (such as materials or additions) attached to a historical resource, or removal of an exterior wall that does not contain distinctive character-defining historical architectural features, that furthers an alteration or addition that is in conformance with the Old Towne Design Standards.

b. Replacement of severely deteriorated or irreparable exterior historic building material or architectural features including but not limited to siding, windows, doors and related trim, with in kind materials matching existing materials in species, design, profile, texture and color (emphasis added), or other appropriate materials as identified in Appendix B (Use of Appropriate Materials) of the Old Towne Design Standards.

c. Alteration to property of a historical resource including additions, new buildings, hardscape or landscape which clearly complies with the Old Towne Design Standards and the Secretary of Interior’s Standards and
does not adversely effect the historical resource, adjoining properties or immediately surrounding neighborhood.

D. Cumulative Impacts on Historical Resources

1. Cumulative Impacts Defined. As provided in CEQA Guidelines Sections 15355, “Cumulative impacts refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” Cumulative impacts are also discussed in CEQA Guidelines Section 15064(i).

2. City Application of Cumulative Impacts. The City shall consider the following when making determinations about whether a project results in a cumulative impact to historical resources:

a. Project conformance to the Old Towne Design Standards and the Secretary of Interior Standards for Rehabilitation.

b. Projects involving alterations or additions to a historical resource preserve the contextual integrity of the local historic district by incorporating site planning and design features that are consistent with the established building pattern and streetscape relationship on the block on which it is located, and the district as a whole. Characteristics to be considered include bulk, massing, architectural articulation, and placement of buildings on the lot.

c. Projects involving new infill development within the local historic district are compatible with the scale, character, building pattern, and streetscape relationship of the block on which it is located and the district as a whole.

d. The limited representation of a particular architectural style or building type in any proposed alteration, addition, or demolition.

e. The cultural significance to the community of a historical resource in any proposed demolition, including but not limited to documented events, individuals, groups of people, or activities in the evolution of the City.

Any project that conflicts with subsections a, b, or c, or results in adverse effects to those resources addressed in subsections d and e may constitute a significant cumulative impact and is not exempt from CEQA review.
3. Assessment of Cumulative Impacts. In order to assess cumulative impacts on historical resources over time, Community Development Director shall periodically report to the Planning Commission and the City Council summarizing number, location (address and district map showing location), value (estimated on permit), and relative success of Old Towne Design Standards and these Local CEQA Guidelines employed in assessing individual project and cumulative impacts of multiple projects involving historical resources. In such periodic report, the Community Development Director shall evaluate threats of loss or destruction of the qualities which caused original formation of the local historic district, listing in and/or determination of eligibility for listing in the National Register or California Register. If the Planning Commission and City Council concur individual and multiple projects processed during the reporting period have not exceeded thresholds for substantial adverse change to the historic district as a whole, then cumulative impacts have been effectively managed.

V. Approval Authority

A. Planning Commission. The Planning Commission is established through the provisions of Title 2, Chapter 2.64 of the Orange Municipal Code and their authority as related to environmental documentation is described in OMC Section 17.08.020B. The Planning Commission has authority to review and approve environmental documents as follows:

1. When prepared in conjunction with a project requiring discretionary action by the Planning Commission, when the Planning Commission is the final approving body for the discretionary application, as defined in the administrative procedures established in Chapter 17.08 of the OMC; or,

2. When a ND or MND is prepared, even if the discretionary planning application itself would otherwise require action by a lower decision-making body only. In these cases, the Planning Commission acts upon the discretionary applications, as well as the ND or MND.

The Planning Commission has authority to review and make recommendations to the City Council for environmental documents as follows:

3. When a ND, MND or EIR is prepared in conjunction with a project requiring discretionary action by the Planning Commission, when Planning Commission is a recommending body to the City Council for the discretionary application, as defined in the administrative procedures established in Chapter 17.08 of the OMC.

The CEQA public review period shall be completed prior to the Planning Commission public meeting or hearing regardless of whether the Planning Commission decision is a recommendation to the City Council or a final action. Public comments received by the City during the public review period and the City’s response to comments shall be forwarded to the Planning Commission for consideration prior to the public
meeting/hearing. The meeting/hearing shall be scheduled to provide a reasonable time frame in which to prepare a response to comments for the Planning Commission’s review.

B. City Council. The City Council has the final approval authority over all environmental documentation, as follows:

1. If prepared in conjunction with a project requiring discretionary action by the City Council;

2. When reviewing a recommendation made by the Planning Commission;

3. When a project decision is appealed; and,

4. When an EIR is prepared, even if the discretionary application itself would otherwise require action by a lower decision making body only (e.g. the Planning Commission). In these cases, the City Council acts upon the discretionary applications, as well as the EIR.

VI. Appeal Process. Any action taken by the Community Development Department or Staff Review Committee in the administration of these environmental guidelines may be appealed by any person aggrieved, or by an officer, commission or department in the City, in accordance with the appeal procedure described in Orange Municipal Code Chapter 17.08.050. Such appeals can be made to the Planning Commission. Any action taken by the Planning Commission may be appealed to the City Council.

VII. Fees. A filing fee, as determined by City Council resolution, shall accompany environmental review applications for any action taken under the provisions of these guidelines. Fees for processing of environmental documentation are identified in the City’s Master Schedule of Fees. Fees are collected for the preparation and processing of a ND, MND, and EIR, as well as for the filing of environmental notices such as a NOD. Any applications made by the City or any of its representatives shall be exempted from this requirement.

VIII. Document Preparation. Preparation of required documentation, including notices, an initial study, ND, MND, EIR, and supporting technical studies, may be done by the City, consultants hired by the City pursuant to the consultant selection procedures outlined in Section 3.08.400 et seq. of the OMC (cost to be billed to the Applicant), or consultants hired by the project proponents. If hired by the project proponent, all documentation shall be prepared under direct supervision of the City, and according to the requirements of the City. All documentation will be reviewed by and completed to the satisfaction of the City, and shall reflect the City’s independent judgment and analysis. (CEQA Guidelines Section 15084)