

EXHIBIT J

LAND USE CODE

CHAPTER XIII: CALIFORNIA ENVIRONMENTAL QUALITY ACT

SECTION 1 COUNTY CEQA GUIDELINES AND PROCEDURES

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Sec. L-XIII 1.1 Authority and Purpose

A. The guidelines set forth in this document are intended as a supplement to the California Environmental Quality Act of 1970, (CEQA, Cal. Pub Res. Code §§ 21000 - 21194), and the Guidelines for Implementation of CEQA (Cal. Code Regs.

Tit. 14 §§ 14100 - 15007). Any inconsistencies between these guidelines and the State CEQA Guidelines, as they presently exist or may hereinafter be amended, shall be resolved by applying the State Guidelines to the exclusion of these Guidelines.

B. These guidelines are binding on all officers, boards, departments, agencies, and commissions of Nevada County government.

Sec. L-XIII 1.2 Definitions

A. THE ADVISORY REVIEW COMMITTEE (ARC) is hereby established as a committee composed of the Planning Director, Director of the Department of Public Works, Chief Building Inspector, and the Environmental Health Director or their specific designated representatives. The purpose and function of the ARC is to review the initial environmental study for projects undertaken by the County or subject to County approval in order to determine the environmental impacts stemming from such projects. Each member of the ARC is to be responsible for reviewing the environmental impacts of projects and for making determinations which are consistent with State and County guidelines. Decisions of the ARC shall be treated as recommendations only. Members of the ARC shall be required to file conflict of interest statements in accordance with the County's conflict of interest code. (Ord. 2239. (05/29/2007))

B. LEAD AGENCY: As used in the State law and the County guidelines, the term "Lead Agency" shall refer to the County official, board, commission, or committee with the original authority to approve or to carry out a project. Whenever any project is subject to the review and approval of both the Board of Supervisors and the Planning Commission (i.e. zoning ordinances or general plan), the Planning Commission shall act as Lead Agency and shall be the body responsible for certification of the adequacy and adoption of the environmental document, and both the Planning Commission and the Board shall review and consider the environmental document as part of their decision making process (see CEQA Guidelines, Cal. Code Regs. tit. 14 §15090). The decision of the Lead Agency on the adequacy of the environmental review may be appealed as provided for herein.

Notwithstanding anything to the contrary herein, the Board of Supervisors may delegate the responsibility for the preparation, conducting of public hearings, and certification of the adequacy and adoption of the environmental document to staff or to any board, committee, or commission (hereinafter collectively the "County"); provided however that the Board of Supervisors or the decision-making body or person shall be required to read and consider the environmental document before it takes action to approve or carry out a project.

Sec. L-XIII 1.3 General Responsibilities of Planning Department as Coordinating Agency

The County Planning Department shall be responsible for insuring that the environmental review required by CEQA occurs for all land use projects requiring the issuance of any discretionary permits within the unincorporated territory of the County.

Whenever the County undertakes any project subject to CEQA, the County Officer or Department principally responsible for the project shall submit the project to the Planning Department for environmental review. The Planning Department shall be responsible for the preparation of the appropriate environmental documents and to that end shall be responsible for the selection and oversight of any consultants retained for that purpose. The officer or department overseeing the project shall be responsible for the cost of conducting the environmental review.

Sec. L-XIII 1.4 Fees

A. Nevada County, in preparing EIRs or Negative Declarations or Initial Studies for projects to be carried out by any person other than the County itself, shall charge and collect a reasonable fee from such person or entity in order to recover the estimated costs incurred in preparing the Initial Study, Negative Declaration, or EIR.

B. Nevada County shall charge and collect a reasonable fee, not to exceed the actual cost of reproduction, from members of the public for a copy of an environmental document.

Sec. L-XIII 1.5 Consultants

A. The County may retain consultants in the preparation and evaluation of the Initial Study, Negative Declaration, and Environmental Impact Reports. If consultants are retained for the preparation of environmental documents, the expenses involved in the preparation shall be borne by the applicant for the project.

B. Following notification by the Planning Department that a consultant is to be retained, the applicant shall initiate the preparation of the environmental documents by filing with the Planning Department a request for preparation of a work program

for the necessary work. Any supplemental information requested by the Planning Department related to the preparation of such a document shall be submitted with the request. The Planning Department, upon receipt of a request, shall prepare a request for proposals (RFP) to be sent to qualified consultants. The RFP shall include the following:

1. Primary topics or aspects of the environment or proposed project which require detailed exploration and evaluation; and
2. Tasks to be performed in preparation of the report; and
3. List of resources and/or types of consultants to be utilized in the report preparation; and
4. A request for the consultants to submit their work program, scope, and approach to complete the EIR together with their estimated costs of services, their time frame for completion, and any other information that is pertinent.

C. The applicant may review the “work program” and indicate to the Planning Department in writing concurrence with or suggested alterations to the program. Such suggestions may be considered by the Department, but it is not bound to comply with the applicant’s suggestions. Prior to initiation of work on the documents, the applicant shall deposit with the County of Nevada the total estimated cost to complete the document. During the preparation of the report, the applicant will be kept apprised of the costs of the County-retained consultants.

D. Any failure of the applicant to comply with these provisions shall constitute grounds for the denial of the applicant’s project.

Sec. L-XIII 1.6 Environmental Impact Report Consultant Selection Procedures

A. The Planning Department shall establish a list of qualified environmental impact report consultants. The established list will also indicate the firms’ particular fields of expertise.

B. Environmental impact report consultants wishing to do work for the County may submit a resume indicating the firm’s principal personnel, work experience, statement of qualifications, and any other information deemed necessary for the Planning Department to make the determination.

An invitation to bid will be based on experience, knowledge of the County and available expertise to ensure high quality, in-depth and comprehensive environmental impact reports for the project requiring the EIR.

C. The selection of the consultant shall be determined by the Planning Department after review, and evaluating the scope and comprehensiveness of each proposal submitted by the consultants. The scope, quality, and cost of the proposal will be major factors in the selection of a consultant.

D. Consultants with a possible conflict of interest, either direct or indirect, in the project shall not be considered.

Sec. L-XIII 1.7 Time Limits

A. Pursuant to the provisions of Cal. Gov't Code § 65950 and Cal. Pub. Res. Code § 21151.5, whenever the County is the Lead Agency for any "Development Project" (as defined in Cal. Gov't Code § 65928), the County shall complete its environmental review within the following time limits from the date on which an application requesting approval is accepted as complete by the County, in accordance with the provisions of Cal. Gov't Code § 65943.

1. One year for projects for which an EIR is prepared.
2. 105 days for projects for which a Negative Declaration is prepared.

B. The time limits established by this Section may be extended in the event that compelling circumstances justify additional time and the project applicant consents thereto. As used herein, compelling circumstances shall include, but shall not be limited to any of the following:

1. The failure of the applicant to pay in advance all costs associated with the preparation of the environmental document.
2. The failure of the applicant to provide any information requested by County and/or County's consultant.
3. The filing of any appeal or litigation contesting any action taken by the County with regard to a project.

4. A determination by County, following preparation of a Negative Declaration, that an EIR is required.

C. The date of acceptance by the County of Nevada of an application requesting approval of the project shall be the date the application is found to be complete and so certified by the County. The date of acceptance shall not be the date of filing the application, but will be on the date that the applicant is expressly notified in writing that the County has thoroughly reviewed the application and has found it to be complete. In the event of County's failure to formally accept an application as complete, the application shall be deemed complete thirty (30) days after its filing.

D. In the event that the applicant does not consent to an extension of time, the Lead Agency may deny the project at a duly noticed public hearing.

E. Notwithstanding the foregoing, any application for a land use permit which is accompanied by a request or dependent upon a change in any ordinance or general or specific plan shall be deemed to be an incomplete application unless and until the ordinance or general or specific plan amendment is adopted. The permit application will be deemed accepted thirty (30) days after the enactment of the general or specific plan and/or ordinance amendment which the application was dependent upon. These provisions shall not be affected or abrogated by any decision or action by the County to include the land use permit (project) in its environmental review of the proposed general or specific plan or ordinance amendments. The purpose of this provision is to avoid any assertion or finding that an application for a land use permit has been "deemed approved" when at the time of the filing of the application it was inconsistent with the County's general or specific plan and/or ordinances.

Sec. L-XIII 1.8 Delegation of Responsibilities

A. The Lead Agency within the County may assign specific functions to County staff, or to any board, committee, or commission to assist in administering CEQA. Functions which may be delegated include but are not limited to:

1. Determination of whether a project is exempt from CEQA.
2. Preparation and circulation of an initial study.
3. Preparation and circulation of a Negative Declaration or EIR.
4. Conducting hearings on the environmental documents.
5. Preparation of responses to public comments.

6. Preparation of suggested findings.
7. Certification and adoption of the environmental document.
8. Preparation and filing of notices.

B. The Lead Agency, or the Board of Supervisors if a project is before the Board for final action thereon, may not delegate the following functions:

1. Review and consideration of a final EIR or Negative Declaration prior to approving a project.
2. The adoption of findings as required by the State CEQA Guidelines.

Sec. L-XIII 1.9 Ministerial Projects

The following projects are deemed ministerial and do not require formal environmental review:

- A. Issuance of building permits.
- B. Approval of the recordation of parcel maps and final maps if all of the conditions of tentative map approval have been complied with.
- C. Approval of individual utility service connection and disconnections.
- D. Transportation (overload and over-width) permits.
- E. Grading permits in conjunction with the construction of a single-family residence with an approved site plan pursuant to Chapter governing Building Nevada County Codes.
- F. All licenses issued by the County of Nevada.
- G. Any other action by the County which does not require the exercise of discretion and/or judgment.

H. All land uses that qualify as ministerial projects under the County's zoning ordinance. (Subsection E amended by Ord. 1919. (11/05/1996))

Sec. L-XIII 1.10 Scope of Environmental Review

The project to be studied shall be the total proposal for the development of the property. If the proposal is for a change in the general or specific plan and/or a rezoning of property, the environmental review shall present a discussion of all of the potentially significant impacts that could occur from the maximum development that may occur under the proposed general plan amendment and/or rezoning. In addition to the foregoing analysis, if the applicant for the general or specific plan amendment and/or rezoning presents a specific proposal for the development of the subject land, the environmental review should also consider the impacts associated with the proposal. The Planning Department may require such information about the project as it deems necessary in order to include the project in the environmental analysis.

Sec. L-XIII 1.11 Initial Study

Whenever a project requiring environmental review is approved or undertaken by the County as Lead Agency, an initial study should be prepared unless it has already been determined (1) that the project could not have any significant adverse environmental impacts, or (2) an EIR should be prepared. The initial study should be prepared using the forms set out in Appendices 1 and 2 and shall include factual information in support of the answers provided to the questions contained in these forms.

Sec. L-XIII 1.12 Negative Declaration

Where the initial study shows that a Negative Declaration should be prepared, procedures shall be as follows:

A. The County shall prepare or cause to be prepared a Negative Declaration which shall include the information required in Cal. Code Regs. tit. 14 § 15071 of the State CEQA Guidelines.

B. The Planning Department shall publish notice of the preparation of the Negative Declaration in a newspaper of general circulation within the County no less than ten (10) days prior to the meeting of the Board, Commission, Committee, or County staff, (hereinafter collectively the "County") which considers the adoption of

the proposed Negative Declaration; provided, however, that when a Negative Declaration is required to be submitted to the State Clearinghouse, the notice of preparation of the Negative Declaration shall be published no less than thirty (30) days prior to the meeting which considers its adoption. Notice should also be given to all organizations and individuals who have previously requested same and to the owners of all property contiguous to the subject project, by mail, ten (10) days in advance of the Board, commissioner, committee, or County staff meeting. Following the publication of the notice required by this Section, the proposed Negative Declaration shall be available for public inspection.

C. The Planning Department shall send a copy of the public notice of the proposed Negative Declaration together with a copy of the proposed Negative Declaration to all Responsible and Trustee Agencies within the State. Where one or more State Agencies will be a Responsible or Trustee Agency, the Planning Department shall send copies of the notice and the proposed Negative Declaration to the State Clearinghouse for distribution to the State Agencies. It shall also send such notice to Federal and Local Public Agencies having to issue subsequent permits for the projects and other interested persons, organizations and private utility companies interested in the project and requesting same.

D. Notwithstanding anything to the contrary in this Section, the period for review by the public and the State Agencies may be shortened to less than thirty (30) days if approved by the State Clearinghouse (reference is to Cal. Code Regs. § 15073(d) of the guidelines).

E. At the time and place specified in the above-referenced notice, or at any duly continued meeting thereof, the Lead Agency shall conduct a public hearing at which members of the public shall be permitted to speak on the proposed Negative Declaration.

F. Following the public hearing the Lead Agency shall consider the proposed Negative Declaration and all testimony and evidence submitted with regard thereto. The Lead Agency may adopt the Negative Declaration or mitigated Negative Declaration only if it finds that there is an absence of substantial evidence that the proposed project might have a significant adverse impact on the environment. If it could be fairly argued that such substantial evidence does exist (in the record), an EIR shall be required.

1. The decision to adopt a Negative Declaration may be appealed to the Board of Supervisors within ten (10) days of the adoption thereof by filing a Notice of Appeal following the procedure set out in Section of the Nevada County Code governing Zoning, 5.12.F . All appeals shall conform to the requirements and procedures set out in Sections under Zoning, 5.12.D, 5.12.F, 5.12.G, 5.12.H, 5.12.L and 5.12.N of the County of Nevada Code. If an appeal is filed on multiple actions, the appeal of the

adoption of the Negative Declaration must be explicitly stated as a separate ground for the appeal. The appeal shall be heard at a public hearing preceded by ten (10) days written notice to each appellant and the real party in interest (if any). Appeal fees shall be paid in accordance with the latest schedule adopted by the Board of Supervisors. The appellant shall file with the Clerk of the Board of Supervisors within twenty (20) calendar days from the date of filing of its notice of appeal, a written statement on appeal which contains a full explanation of the legal basis and grounds for the appeal. Failure to comply with these requirements may result in the summary denial of the appeal. (Subsection amended by Ord. 2047. (02/06/2001))

2. At the appeal hearing, the Board shall receive all relevant evidence offered by the appellant, the real party in interest, and staff, on each of the issues raised in the notice of appeal and the written statement of appeal provided, however, that neither the appellant nor any other person or party shall be allowed to raise issues which were not expressly set out in the notice of appeal. The Board shall have the authority to limit the amount of time that the appellant and the real party in interest may each have in an appeal hearing to not less than thirty (30) minutes. Members of the public may be allowed to testify on issues raised by the appellant and may be limited to five (5) minutes each.

3. Where the appeal is based, in whole or in part, on the failure of the County to comply with any procedure required by law, including but not limited to the failure to provide proper or timely notice, the appeal hearing shall be deemed to be curative of any procedural omissions or errors stemming from the hearing held by the lower body.

4. The intent of these provisions is to require each aggrieved and/or objecting party to timely file an appeal which expressly states each error or omission which that person or party believes exists in order to allow the County an opportunity to address any such error or omission and to take such remedial action, if any, as may be legally required.

5. At the conclusion of the appeal hearing and based upon the evidence presented therein and the record from the Lead Agency's hearing, the Board of Supervisors may sustain, overrule, or modify any action taken by the Lead Agency with regards to the environmental document. If the Board of Supervisors overturns or modifies the action of the Lead Agency as to the environmental document, the Lead Agency shall consider the new or modified environmental document when acting on the project; provided however, if the Lead Agency's action on the project has been appealed to the Board of Supervisors, the Lead Agency shall not be required to take any further action on the environmental document or the project.

Sec. L-XIII 1.13 Consideration of Negative Declaration

Prior to approving any project, the Lead Agency shall read and consider the Negative Declaration.

Sec. L-XIII 1.14 Notice of Determination

After the Lead Agency decides to carry out or to approve a project for which a Negative Declaration has been approved, the Planning Department shall file a Notice of Determination in compliance with Cal. Code Regs. tit. 14 § 15075 of the Guidelines after the expiration of the ten (10) day appeal period.

Sec. L-XIII 1.15 EIR Process

A. Environmental Impact Reports for public projects may be prepared by using the methods provided below or through the County's own effort.

B. The Environmental Impact Report for private projects shall be prepared according to one of the following methods:

1. EIR prepared through County-retained consultants.

a. The applicant shall initiate the preparation of the EIR by filing an authorization with the Planning Department for staff to prepare a Request for Proposals together with a fee in the amount consistent with the latest adopted resolution or ordinance of the Board of Supervisors.

b. Any supplemental information compiled by the applicant related to the preparation of such a document may also be submitted with the request.

c. Staff shall secure the preparation of an EIR following the procedures set out in this Article.

2. Project sponsor submittal of preliminary draft EIR.

- a. The project sponsor can initiate the review process by filing environmental data in the form of a preliminary draft EIR with the Planning Department along with the fee amount as established by the latest resolution adopted by the Board of Supervisors. In such cases the applicant's project shall not be accepted as filed with the County until the preliminary draft EIR is submitted to the County
- b. The sponsor's preliminary draft EIR shall be subject to an independent evaluation and analysis by a County-retained consultant as required by Cal. Code Regs. tit. 14 § 15084 of the officially adopted State CEQA Guidelines.
- c. The cost of modifying the sponsor's preliminary draft EIR to reflect the independent judgment of the County will be directly related to the scope, completeness and in-depth analysis of the environment and project provided in the document.
- d. The Planning Department, upon receipt of the preliminary draft EIR, shall prepare a work program outlining the process necessary to modify the EIR to reflect the independent judgment of the County.

Sec. L-XIII 1.16 Notice of Completion

- A. Public notice of the completion of a draft EIR shall be provided by the Lead Agency within the County at the same time as notice of completion is sent to the Resources Agency. Notice shall be given to all organizations and individuals previously requesting such notice and shall also be published in a newspaper of general circulation in the area affected by the proposed project.
- B. The method of providing notice specified in subsection A above shall not preclude the County from providing additional notice, nor shall it preclude the County from providing the public notice required herein at the same time and in the same manner as public notice otherwise required by law for such projects.

Sec. L-XIII 1.17 Public Review of EIR

- A. CONSULTATION: After completing a draft EIR, the Lead Agency within the County shall consult with and obtain comments from public agencies having jurisdiction by law with respect to the project.

B. REVIEW TIME: In order to provide sufficient time for public review of a draft EIR, review periods for draft EIRs shall not be less than thirty (30) days nor longer than ninety (90) days except in unusual situations.

C. PUBLIC HEARINGS: The Lead Agency shall hold a public hearing on the draft EIR. The public hearing may be conducted either in separate proceedings or in conjunction with other proceedings of the public agency. Notice shall be given of the public hearing in the same manner as that required for rezonings.

D. HEARING BODY: Notwithstanding subparagraph C above, on general or specific plan amendments and changes to the zoning ordinances, the Planning Commission shall be the body with the duty to conduct hearings and to review, approve, and to certify the adequacy of the EIRs.

E. AVAILABILITY OF COPIES OF DRAFT EIR: Copies of the draft EIR shall be filed in the County public libraries in Grass Valley, Nevada City and Truckee for public use and copies may be purchased in the County Planning Department.

Sec. L-XIII 1.18 Response to Comments

Following the public review period and the conclusion of the public hearing, the Lead Agency shall have responses to all pertinent comments prepared. The responses shall be in writing and shall describe the disposition of all significant environmental issues raised. The response shall provide a good faith reasoned analysis. The responses may take the form of revisions to the draft EIR or may be in a separate section in the final EIR.

Sec. L-XIII 1.19 Certification of EIR

Following preparation of the response to comments, the final EIR shall be reviewed for its adequacy. Any interested citizen or party may submit written comments on the adequacy of the proposed response to comment to the Planning Department at any time up to seven (7) calendar days before the response to comments and the draft EIR are submitted to the Lead Agency for certification as a final EIR; provided, however, that the County shall not be required to respond to comments received or to revise the EIR. If the Lead Agency finds that the EIR is complete and has been prepared in accordance with the requirements of CEQA, the Lead Agency shall certify same.

Sec. L-XIII 1.20 Appeals of the Adequacy of the EIR

A. Within ten (10) days of the Lead Agency's decision to certify an EIR, an appeal of the adequacy of the EIR may be submitted to the Board of Supervisors by filing a Notice of Appeal following the procedures set forth in Section governing Zoning 5.12.F of the Nevada County Code. If an appeal is filed on multiple actions, the Notice of Appeal must expressly state each deficiency in the EIR as a basis for the appeal. All appeals shall conform to the requirements and procedures set out in Zoning Sections 5.12.D, 5.12.F, 5.12.G, 5.12.H, 5.12.L and 5.12.N of the Nevada County Code. The appellant shall file with the Clerk of the Board of Supervisors within twenty (20) calendar days from the date of filing of its notice of appeal, a written statement on appeal which contains a full explanation of the legal basis and ground for the appeal. Failure to comply with these requirements may result in the summary denial of the appeal. (Subsec. Amend. by Ord. 2047. (02/06/2001))

B. The appeal shall be heard at a public hearing preceded by ten (10) days written notice to each appellant and the real party in interest (if any).

At the appeal hearing, the Board shall receive all relevant evidence offered by the appellant, the real party in interest and staff on each of the issues raised in the notice of appeal; provided, however, that neither the appellant nor any other person or party shall be allowed to raise issues which were not expressly set out in the notice of appeal. The Board shall have the authority to limit the amount of time that the appellant and the real party in interest may each have in an appeal hearing to not less than thirty (30) minutes. Members of the public may be allowed to testify on issues raised by the appellant and may be limited to five (5) minutes.

C. Appeal fees shall be pursuant to the latest adopted resolution and/or ordinance of the Board of Supervisors.

D. Failure to comply with these requirements will exclude consideration by the Board of Supervisors as to the adequacy of the EIR offered by the persons appealing the decision to approve or to disapprove any project.

E. Where the appeal is based, in whole or in part, on the failure of the County to comply with any procedure or other legal requirement, including but not limited to, the failure to provide proper or timely notice, the conducting of an appeal hearing

shall be deemed to be curative of any such procedural omissions or errors stemming from the hearing held by the lower body.

F. The intent of this provision is to require each aggrieved and/or objecting party to timely file an appeal which expressly states each error or omission which that person or party believes exists in order to allow the County an opportunity to address any such error or omission and to take such remedial action, if any, as may be legally required.

G. At the conclusion of the appeal hearing and based upon the evidence presented therein and the record from the Lead Agency's hearing, the Board of Supervisors may sustain, overrule, or modify any action taken by the Lead Agency with regards to the environmental document. If the Board of Supervisors overturns or modifies the action of the Lead Agency as to the environmental document, the Lead Agency shall consider the new or modified environmental document when acting on the project; provided however, if the Lead Agency's action on the project has been appealed to the Board of Supervisors, the Lead Agency shall not be required to take any further action on the environmental document or the project.