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TO: Staff

FROM: Amy J. Bodek, AICP 
Director of Regional Planning

LOCAL DENSITY CRITERIA FOR RESIDENTIAL INFILL PROJECTS PURSUANT TO SECTION 15195 OF THE PUBLIC RESOURCES CODE INTERPRETATION NO. 2023-07

PURPOSE

This memorandum establishes local density criteria to promote higher density infill and enable more projects to qualify for a Residential Infill Exemption under the California Environmental Quality Act (CEQA) if they meet all threshold requirements set forth in Sections 15192 and 15195 of the Public Resources Code (PRC).

BACKGROUND

The State CEQA Statute and Guidelines provide criteria and procedures for specific housing projects, including residential infill. The Residential Infill Exemption criteria pertain to project size, location, unit quantity and density, affordable housing, requires the project to be subject to a plan in which the environmental determination was certified or adopted within five years of deeming the project's application complete, and excludes projects from utilizing the exemption if certain environmental conditions exist.

The exemption also requires projects to meet both of the following requirements regarding number of units (emphasis added):

- (A) The project does not contain more than 100 residential units.
- (B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:
 - 1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.
 - 2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

Currently, the County does not have its own criteria for determining whether a project promotes higher density infill housing.

APPLICABILITY

All housing projects that meet the threshold criteria set forth in PRC Sections 15192 and 15195, including applicable plan in which the environmental determination was certified or adopted within five years of deeming the project's application complete, may utilize the Residential Infill Exemption.

On November 30, 2022, the County Board of Supervisors adopted the Housing Element Update of the General Plan, along with its Program Environmental Impact Report (EIR). The General Plan governs all Area/Community/Neighborhood/Specific Plan. Therefore, the Program EIR adoption date also extends to these plans and this date should be relied upon for projects that are subject to older Area/Community/Neighborhood Plans.

INTERPRETATION

Since the County does not have its own criteria for determining whether a project promotes higher density infill housing, a project must either have a density of 10 or 20 units per acre as described above, to utilize the residential infill exemption under CEQA. However, setting the minimum criteria to any density that is greater than the average density of the residential properties within 1,500 feet provides a third density option which enables all housing projects that do not exceed 100 units and fully meet the other criteria to utilize this exemption, thereby accelerating housing development processing.

Additionally, the Residential Infill Checklist, available on the Current Planning Blog, has been updated to reflect the County's density criteria.

PROCEDURE

The Residential Infill Exemption Checklist has been updated with local density criteria. Planners shall continue to complete the form when applying this exemption.

AJB:DD:ST:JH:MP:lm

Attachments:

- 1) Residential Infill Exemption Checklist

RESIDENTIAL INFILL EXEMPTION CHECKLIST

Project title: _____

Lead agency name and address: _____

Contact person and phone number: _____

Project location: _____

Project sponsor's name and address: _____

General plan designation: _____

Zoning: _____

Description of project:

Surrounding land uses and setting:

Pursuant to California Code of Regulations (CCR) §15195, CEQA does not apply to any development project that meets the following criteria:

1. The project meets all threshold criteria set forth in §15192; provided that review per section 15192(b) must be certified or adopted within five years of the date that the lead agency deems project application to be complete pursuant to Government Code section 659432.
 Yes No
2. The project site is not more than four acres in total area. True False
3. The project does not include any single level building that exceeds 100,000 square feet.
 True False
4. The project is a residential project on an infill site¹. True False
5. The project is within one-half mile of a major transit stop. Yes No
6. The project consists of 100 or fewer residential units. Yes No
7. The project promotes higher density housing based on County criteria or based on either of the following criteria: Yes No

¹ As defined in the California Code of Regulations section 15191(e), "Infill site" means a site in an urbanized area that meets one of the following criteria:

- (1) The site has been previously developed for qualified urban uses; or
- (2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or
- (3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:
 - (A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and
 - (B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

- The project has a minimum density of 20 units per acre, which is conclusively presumed to promote higher density infill housing.
 - The project has a minimum density of 10 units per acre and that density is greater than the average density of the residential properties within 1,500 feet, which is be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.
 - The project meets the County criteria, set at any number that is greater than the average density of the residential properties within 1,500 feet, which is presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.
8. The project would provide housing units for moderate, low or very low income families as set forth in either A or B below:
- A. The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
 - At least 10 percent of the housing is sold to families of moderate income, or
 - Not less than 10 percent of the housing is rented to families of low income, or
 - Not less than 5 percent of the housing is rented to families of very low income.
 - B. If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

THE PROJECT MEETS ALL OF THE FOLLOWING SECTION 15192 THRESHOLD CRITERIA:

1. The project is consistent with:
 - A. Any applicable General Plan, specific plan, area plan, community plan, or local coastal program, as that plan/program existed at the time when the application was deemed complete. Yes No
 - B. Any mitigation measures required by that plan or program.
 - Yes No
 - C. Any applicable zoning ordinance, as that zoning ordinance existed at the time when the application was deemed complete, unless the zoning of project site is inconsistent with the General Plan because the site has not been rezoned to conform to the General Plan.
 - Yes No

2. Community-level environmental review² has been adopted or certified within five years of the date that the lead agency deems the application for the project to be complete pursuant to Government Code Section 65943. Yes No
3. The project and other approved projects can be adequately served by existing utilities and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees. Yes No
4. The project site does not contain wetlands. True False
5. The project site does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. True False
6. The project does not harm any species protected by the federal Endangered Species Act, the Native Plant Protection Act, or the California Endangered Species Act. True False
7. The project does not cause the destruction/removal of any species protected by a local ordinance in effect at the time the project application was deemed complete. True False
8. The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code. True False
9. The project site is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. Yes No
 - (a) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements. Yes No Not Applicable
If applicable, the project will comply as follow: [Click here to enter text.](#)
 - (b) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements. Yes No Not Applicable

² As defined in the CCR section 15191(c), "community-level environmental review" means either of the following:

- (1) An EIR certified on any of the following:
 - (A) a general plan,
 - (B) a revision or update to the general plan that includes at least to the land use and circulation elements,
 - (C) an applicable community plan,
 - (D) an applicable specific plan, or
 - (E) a housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.
- (2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

If applicable, the project will comply as follow: [Click here to enter text.](#)

10. The project does not have a significant effect on historical resources pursuant to PRC section 21084.1. True False
11. The project site is not subject to wildland fire hazard, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard. True False
12. The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties. True False
13. The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency. True False
14. The project site is within a delineated earthquake fault zone or seismic hazard zone. Yes No

If Yes, the applicable General Plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard. Yes No

15. The project site presents a landslide hazard, flood plain, flood way, or restriction zone. Yes No

If yes, the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood. Yes No

16. The project site is not located on developed open space. True False
17. The project site is not located within the boundaries of a state conservancy. True False
18. The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in Sections 15193 to 15195. True False

THE PROJECT DOES NOT QUALIFY FOR THIS EXEMPTION IF ANY OF THE FOLLOWING OCCUR:

- There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
- Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
- New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

- * If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).