

§3-5 ENVIRONMENTAL IMPACT REVIEW

- §3-5-1 TITLE
- §3-5-2 PURPOSE AND INTENT
- §3-5-3 DEFINITIONS
- §3-5-4 THRESHOLDS OF APPLICABILITY AND EXEMPTION
- §3-5-5 GENERAL PROVISIONS
- §3-5-6 ENVIRONMENTAL CHECKLIST ADOPTED BY REFERENCE
- §3-5-7 APPLICATION REQUIREMENTS
- §3-5-8 REVIEW BY LAND USE OFFICER AND OTHER AGENCIES
- §3-5-9 DETERMINATION BY LAND USE OFFICER
- §3-5-10 PROCEDURES FOLLOWING COMPLETION OF AN ENVIRONMENTAL IMPACT STATEMENT
- §3-5-11 ACTION ON ENVIRONMENTAL IMPACT STATEMENT AND DEVELOPMENT APPLICATION

[See Commentary]

§3-5-1 TITLE

This Ordinance shall be known and cited as the “Environmental Impact Review Ordinance of the County (City) of _____.

§3-5-2 PURPOSE AND INTENT

The purpose and intent of this ordinance is to establish a requirement that developers proposing land developments that meet or exceed a given threshold must assess environmental impacts of the proposed development and implement measures to mitigate significant impacts where they occur. This ordinance establishes a process for the review and approval of an environmental checklist. It authorizes the local government to place conditions on development approval when impacts of a proposed development would be significant and mitigation measures are deemed necessary. In cases where impacts of a development proposal are severe and cannot be mitigated, this ordinance authorizes the denial of project approval.

[See Commentary]

§3-5-3 DEFINITIONS

Environment: The natural elements and the man-made elements, including all of the physical, biological, cultural, or socioeconomic components associated with the natural and man-made elements found in a given area.

Local Governing Body: The Board of Commissioners of _____ County [or the Mayor and City Council of the City of _____].

Mitigation: Action designed to reduce, negate, resolve, avoid, replace, or otherwise correct a condition with regard to project-induced losses or impacts, including, but not limited to the following: restoration, creation, or enhancement of natural conditions; changes to one or more design features of the proposed development, including reduction in scale or limitations on the locations of certain land uses or activities; financial assistance with regard to a particular problem or issue; the provision of infrastructure improvements; or any other action that would

reduce, avoid, correct, or otherwise resolve the potential impacts associated with development of the project. In determining measures to mitigate impacts, the following shall be considered the order of preference: (a) Avoiding the impact altogether by not taking a certain action or parts of actions; (b) Minimizing impacts by limiting the degree or magnitude of an action and its implementation; (c) Rectifying impacts by repairing, rehabilitating, or restoring the affected environment; (d) Compensating for an impact by replacing or providing substitute resources or environments; and (e) Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action.

Significant adverse environmental impact: Any effect which has the potential to do the following: degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community from the state, region, or locality; threaten to eliminate important examples of the major periods of the state's, region's, or locality's history or prehistory; overburden public infrastructure or public services; result in traffic congestion, excessive noise, or degrade air or water quality, or cause any other substantial adverse effects on human beings and/or the natural or built environment, either directly or indirectly.

Qualified professional: A person who has received a degree from an accredited college or university in a field necessary to identify and evaluate a particular impact, and/or a person who is professionally trained and/or certified in such field(s).

§3-5-4 THRESHOLDS OF APPLICABILITY AND EXEMPTION

This Ordinance shall apply to any proposed project which:

- (a) Has a project area of 10 or more acres.
- (b) Involves the construction of 20,000 gross square feet or more of building space for residential, institutional, office, commercial, or industrial purposes.
- (c) Involves a subdivision of land containing 10 or more lots;

Provided, however, that this Ordinance shall not apply to any project regardless of size for which a permit is required by the State Department of Natural Resources, Environmental Protection Division and which contains a process of environmental assessment.

[See Commentary]

§3-5-5 GENERAL PROVISIONS

The Land Use Officer shall review all development applications to determine if the requirements of this Ordinance apply. No land development or activity that meets or exceeds the thresholds of applicability specified in this Ordinance shall be permitted, until or unless the developer of the proposed land development or activity has complied with the requirements of this Ordinance. No land use permit, preliminary plat approval, building permit, or any other locally required permit for development shall be issued for any development that meets or exceeds the thresholds of applicability specified in this Ordinance until the environmental review procedure specified by this Ordinance has been satisfied.

§3-5-6 ENVIRONMENTAL CHECKLIST ADOPTED BY REFERENCE

The environmental checklist attached to this Ordinance is hereby adopted and made a part of this Ordinance.

§3-5-7 APPLICATION REQUIREMENTS

When the proposed development requires the submittal of another application for review and approval by the Local Governing Body, such as a change in land use intensity district, conditional use permit, preliminary plat, development permit, land use permit, or building permit, the environmental checklist shall be submitted by the applicant and processed by the local government concurrent with the application first required in the sequence of development approval. To this end, the Land Use Officer shall incorporate the environmental checklist into the application materials required for submittal as part of all other development approval processes of the local government. When no such application is required for the proposed development, the environmental checklist shall be submitted as a separate application for approval. Nothing in this Ordinance shall be construed to require an applicant to submit an environmental checklist and perfect an environmental impact review more than one time for the same or substantially similar development proposal.

[See Commentary]

All applications for environmental impact review shall consist of the following:

§3-5-7.1 Environmental Checklist. An applicant for a development project that meets or exceeds one or more thresholds of applicability specified by this Ordinance shall complete an environmental checklist, which shall be reviewed and processed in accordance with this Ordinance. The project applicant shall be responsible for responding to all questions in the environmental checklist. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project level, indirect as well as direct, and construction as well as operational impacts. In order to provide analysis of the project impacts on the environment to a level where it is possible for the Land Use Officer to determine the level of significance, the project applicant may find it necessary to have additional studies conducted, such as traffic studies; biological resources inventories; geotechnical assessments; soils studies; and other studies depending on the types of impacts anticipated. In cases where significant impacts are anticipated, the project applicant must utilize the services of a qualified professional to prepare the responses to the Environmental Checklist or any information related thereto. The Land Use Officer may require the applicant to submit technical assessments which shall be adequate for the Land Use Officer to evaluate the development proposal and all probable significant adverse impacts. The Land Use Officer may find that such technical assessments are not necessary for the reason that adequate factual information already exists at his or her disposal to facilitate such evaluation. Technical assessments, if required, shall be attached to or incorporated into any environmental checklist required for the development proposal.

§3-5-7.2 Site Plan. In conjunction with the application for environmental impact review, the applicant shall submit a site plan with sufficient detail to determine the nature of the proposed development.

§3-5-7.3 Fee. A fee shall be submitted as established from time to time by the Local Governing Body.

§3-5-8 REVIEW BY LAND USE OFFICER AND OTHER AGENCIES

Upon receipt of a completed application for environmental impact review, the Land Use Officer shall conduct a review of said application. If the environmental impact review application is submitted concurrent with another application for development required by the local government, the Land Use Officer shall conduct the review within the time frame established for the application. If no other development application is required for the proposed development other than the environmental impact review, then the Land Use Officer shall review and make a decision on the environmental impact review application within 30 days of the date the application was certified as complete. The Land Use Officer may seek the opinions and/or recommendations of any other local, regional, state, or federal agency with expertise in the particular impacts of a proposed development. The Land Use Officer may rely on the opinions or recommendations of any qualified agency in making a determination required by this Ordinance provided said opinions or recommendations are in received in writing by the Land Use Officer.

§3-5-9 DETERMINATION BY LAND USE OFFICER

On the basis of reviewing the environmental checklist and any supporting materials, the Land Use Officer shall make a written determination of impact on the application. The Land Use Officer shall make one of the following determinations, in writing, which shall be forwarded to the development applicant:

- (a) Finding of no significant impact (FONSI). “The proposed project will not have a significant adverse environmental impact.” If such a determination is made, no further action except for notification to the applicant is needed, and the development application shall be processed and approved, pending any other required approvals.
- (b) Significant impacts will be mitigated. “The proposed project would have a significant adverse environmental impact on the environment, but the applicant has proposed measures sufficient to mitigate the identified adverse impacts. If the proposed development is approved contingent upon one or more measures of mitigation, the development will not have a significant adverse environmental impact.” If such a determination is made, no further action is needed except for notification to the applicant, and the development application shall be processed and approved, contingent on the applicant’s compliance with a written listing and description of measures required to mitigate significant adverse environmental impacts, which shall automatically become conditions of development approval.
- (c) Finding of probable significant adverse impact – environmental impact statement required. “The proposed project will have a significant adverse environmental impact, and the application does not have sufficient information to determine with precision the nature and extent of the probable adverse environmental impacts. Therefore, additional information in the form of an environmental impact statement is required to be supplied by a qualified professional.” If such a determination is made, the Land Use Officer shall clearly identify in writing to the applicant the nature of such impacts, the types of information or special studies that are required to be included in the environmental impact statement, and the professional qualifications required, if any, to further assess impacts and/or determine how to mitigate the adverse environmental impacts of the proposed development. Such a finding shall suspend the environmental impact review and any concurrently proposed development application until such time as the required environmental impact statement is submitted to the Land Use Officer, at which time review by the Land

Use Officer will resume and action on the environmental impact review application and any concurrently proposed development shall proceed in accordance with procedures following the completion of environmental impact statements, as set forth in this Ordinance.

[See Commentary]

§3-5-10 PROCEDURES FOLLOWING COMPLETION OF AN ENVIRONMENTAL IMPACT STATEMENT

Upon receiving a completed environmental impact statement, the Land Use Officer shall have 30 business days to conduct a review and another determination on the environmental impacts of the proposed development. The Land Use Officer shall arrange for the proposed development application and environmental impact statement to be scheduled for public hearing before the Local Governing Body no later than 45 days following receipt of a completed environmental impact statement. The applicant shall be notified in writing of the date, time, and place of the hearing at least 15 days prior to public hearing. The Land Use Officer's written determination and recommended mitigation measures shall be transmitted to the project applicant at that time. The public shall be given notice by publication in a newspaper of general circulation in the territory of the local government at least 15 days prior to the public hearing of the date, time, place, and nature of the hearing, along with information pertaining to identification of the property. The environmental impact statement, environmental checklist, Land Use Officer's written determination, and any recommended revisions and mitigation measures, shall be placed at a location available for public review at the County [City] offices at least 15 days prior to the public hearing. The applicant shall, at the hearing, have an opportunity personally or through counsel, to present evidence and argument in support of the proposed application and measures proposed to mitigate adverse environmental impacts.

§3-5-11 ACTION ON ENVIRONMENTAL IMPACT STATEMENT AND DEVELOPMENT APPLICATION

Following the public hearing, the Local Governing Body may take one of the following actions:

- (a) Accept the environmental impact statement and approve the development application and any concurrent applications as may be applicable, subject to compliance, as a condition of development approval, with mitigation measures specified in the environmental impact statement or as recommended by the Land Use Officer or modified by the Local Governing Body
- (b) Accept the environmental impact statement, but deny the development project and environmental impact review approval on appropriate grounds which may include: 1) the adverse environmental impacts cannot be mitigated, or 2) the proposed development or development applicant cannot or is unwilling to comply with selected or all conditions and revisions as recommended in the environmental impact statement or as required by the Local Governing Body.
- (c) Delay action on the environmental impact statement and development project for a defined period of time, not to exceed six months, for the purpose of negotiating with the project applicant to seek compliance with all of the conditions determined appropriate by the Local Governing Body. During this negotiation process, the Land Use Officer and the Local Governing Body may modify its original requirements for conditions in an effort to seek mutual agreement on the mitigation measures required for project approval. ***[See References]***

ENVIRONMENTAL CHECKLIST

Basic Information

1. Project Title:
2. Lead Agency Name and Address: (LAND USE OFFICER)
3. Contact Person and Phone Number:
4. Project Location (Address, City or Township, County):
5. Project Sponsor's Name, Address, Phone and FAX:
6. Comprehensive Plan Designation:
7. Zoning (if Applicable):
8. Description of Project: (Describe the whole action involved, including but not limited to all phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)
9. Surrounding Land Uses and Setting. Briefly describe the project's surroundings and adjacent land uses:
10. Other Public Agencies whose Approval is Required (i.e., federal permits, financing approval, participation or service agreement):

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is potentially significant as indicated by the checklist on the following pages.

<input type="checkbox"/> Aesthetics	<input type="checkbox"/> Agriculture Resources	<input type="checkbox"/> Air Quality
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Historic/Cultural Resources	<input type="checkbox"/> Geology/Soils
<input type="checkbox"/> Hazards and Hazardous Materials	<input type="checkbox"/> Hydrology/Water Quality	<input type="checkbox"/> Land Use/Planning
<input type="checkbox"/> Mineral Resources	<input type="checkbox"/> Noise	<input type="checkbox"/> Population/Housing
<input type="checkbox"/> Public Services	<input type="checkbox"/> Recreation	<input type="checkbox"/> Transportation/Traffic
<input type="checkbox"/> Utilities/Service Systems	Other (specify)	

INSTRUCTIONS FOR COMPLETING THE ENVIRONMENTAL CHECKLIST

The following instructions pertain to the Environmental Checklist. The project applicant is required to provide responses and supplemental analysis to the questions on separate sheets of paper. The question need not be repeated in the response. Only reference to the Issue Number (example: I.a., II.b., etc.) is necessary.

Due to the level of detail that may be required to answer the questions, the project applicant should consider hiring a qualified professional to prepare the Checklist responses, as well as perform research, evaluate conditions, conduct supplemental studies, and investigate general standards of significance in order to formulate responses from which the lead agency (Land Use Officer) can make a determination of impact.

The lead agency (Land Use Officer) shall evaluate the responses. Following review of the responses, the lead agency shall make a determination as to the significance of the issue, and develop conditions, revisions, or other factors that shall be required as a condition of approval, if applicable.

1. A brief explanation is required for all answers. In order for a lead agency (Land Use Officer) to make a finding of no significant impact, the answer must adequately support such a determination by showing that the impact simply does not apply to the subject project, or that measures have been integrated into project design that reduce, avoid or negate a possible impact. The responses should reference information sources used (such as soils studies, traffic analysis, grading analysis, etc.), and explain project specific factors. (Response example: the proposed XX number of townhomes will generate XX trips per day, based on the Institute of Traffic Engineers Trip Generation Manual.)
2. All answers must take into account the whole action involved, including off-site as well as on-site improvements, indirect as well as direct, and construction as well as operational impacts.
3. If applicable, any earlier analyses may be used and referenced. The findings should be cited, and any measures or revisions previously recommended which have been incorporated into the proposed plan identified.
4. The responses should indicate any measures incorporated into the plan, plan design, infrastructure improvements, fees to be paid or other financial assistance provided to service provider, or other actions which are anticipated to be undertaken, which will reduce or avoid a potential impact. (Example of response: Traffic flow will be impacted by an additional XX number of trips per day as a result of development of XX number of townhomes. The plan dedicates sufficient land (XX feet in width and XX feet in length) to accommodate the creation of additional right-of-way, including a right-in turn lane, and restriping of the pavement to allow for a left turn pocket into the entrance).
5. References to information sources which will assist the lead agency (Land Use Officer) in the determination of impacts (such as the Comprehensive Plan or Master Plan for Water, Sewer, or Drainage), including sections and page numbers as appropriate.
6. A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

ENVIRONMENTAL CHECKLIST

Details

ISSUE – APPLICANT TO RESPOND (To be completed by applicant as separate attachment)	DETERMINATION OF IMPACT (To be completed by Land Use Officer)	
	Potentially Significant (mitigation or revision required)	No Impact (with or without mitigation)
1. Aesthetics – Would the project:		
(a) Have a substantial impact on a scenic vista (i.e., block mountain, lake, skyline view)?		
(b) Substantially damage scenic resources, including but not limited to: trees, rock outcroppings, slopes over 30% grade, and historic buildings or sites viewed from a highway?		
(c) Substantially degrade the existing visual character or quality of the site and its surroundings?		
(d) Create a new source of substantial light or glare that would adversely affect day or night time views of the area?		
2. Agricultural Resources		
(a) Would the proposed project convert existing, productive farmland to a non-agricultural use?		
3. Air Quality -- Would the project:		
(a) Conflict with implementation of any applicable regional or local air quality plan?		
(b) Create objectionable odors affecting a substantial number of people?		
(c) Expose sensitive receptors (i.e., school, hospitals, residential units, day care centers, and similar uses) to substantial pollutant concentrations?		
4. Biological Resources – Would the project:		
(a) Have a substantial adverse effect, either directly or indirectly through habitat modification, on any species identified as a candidate, sensitive or special status species by the U.S. Fish and Wildlife Service or state agency?		
(b) Have a substantial adverse effect (through removal or substantial modification due to grading and site preparation) on any sensitive natural plant community identified by the US Fish and Wildlife Service?		
(c) Have a substantial adverse impact through direct removal, filling, hydrological interruption, or other substantial modification due to grading and site preparation on federally protected wetlands as defined by Section 404 of the Clean Water Act?		

**§3-5 Environmental Impact Review
Model Land Use Management Code**

ISSUE – APPLICANT TO RESPOND (To be completed by applicant as separate attachment)	DETERMINATION OF IMPACT (To be completed by Land Use Officer)	
	Potentially Significant (mitigation or revision required)	No Impact (with or without mitigation)
(d) Interfere with the movement of any native resident or migratory fish or wildlife species, with established native or migratory wildlife movement corridors, or impede the use of native wildlife nursery sites?		
(e) Conflict with any local tree preservation ordinance?		
5. Cultural Resources - Would the project:		
(a) Affect a historical resource (such as a battleground, locally significant historic structure or site, National Register sites or structures, an archaeological or paleontological resource, or other locally or regionally important cultural resource)?		
(b) Disturb any human remains, including those interred inside or outside of formal cemeteries?		
6. Geology and Soils – Would the project:		
(a) Expose people or structures to risk of loss, injury or death as a result of seismic ground shaking, landslides, ground failure due to liquefaction, or location on expansive soil?		
(b) Result in soil erosion or the loss of topsoil?		
(c) Have soils incapable of adequately supporting the use of septic tanks or other alternative wastewater systems where sewers are not available?		
(d) Have a substantial effect, either directly or indirectly, upon any locally or regionally rare or exemplary landforms or topographic/geographic features?		
7. Hazards and Hazardous Materials – Would the project:		
(a) Create a hazard to the public or the environment through routine transport, emission, use or disposal of hazardous materials? Are any potential hazardous activities located within ¼ mile of a school site?		
(b) Impair implementation of or physically interfere with an adopted emergency response or evacuation plan?		
8. Hydrology and Water Quality – Would the project:		
(a) Violate any water quality standards or waste discharge requirements? Degrade water quality?		
(b) Substantially deplete groundwater supplies or interfere with groundwater recharge (i.e., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been issued)?		

**§3-5 Environmental Impact Review
Model Land Use Management Code**

ISSUE – APPLICANT TO RESPOND (To be completed by applicant as separate attachment)	DETERMINATION OF IMPACT (To be completed by Land Use Officer)	
	Potentially Significant (mitigation or revision required)	No Impact (with or without mitigation)
(c) Alter the drainage pattern of the site or the area, including the alteration of a stream or river, or increase the amount of surface runoff in a manner that would result in flooding on or off-site?		
(d) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems?		
(e) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map?		
(f) Have a substantial adverse effect, either directly or indirectly, upon any locally or regionally rare or exemplary hydroform, or hydrologic/ aquatic feature?		
9. Land Use and Planning – Would the project:		
(a) Physically divide an established community?		
(b) Result in incompatible land uses with adjacent properties and uses?		
(c) Conflict with an applicable land use plan, policy or regulation of an agency with jurisdiction over the project?		
10. Noise – Would the project result in:		
(a) Exposure of persons to or generation of noise levels in excess of standards established in the local Comprehensive Plan, a noise ordinance, or applicable standards of other agencies?		
(b) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?		
11. Population and Housing – Would the project:		
(a) Induce substantial population growth in an area directly (by proposing new homes or businesses) or indirectly (through extension of roads or other infrastructure)?		
(b) Displace persons, necessitating the construction or replacement of housing elsewhere?		
12. Public Services		
(a) Would the project result in an increased service level which would impact the service response times, acceptable service ratios, or other performance objectives for:		
(b) Schools		
(c) Fire Protection		
(d) Police Protection		

**§3-5 Environmental Impact Review
Model Land Use Management Code**

ISSUE – APPLICANT TO RESPOND (To be completed by applicant as separate attachment)	DETERMINATION OF IMPACT (To be completed by Land Use Officer)	
	Potentially Significant (mitigation or revision required)	No Impact (with or without mitigation)
13. Recreation		
(a) Would the project increase the use of existing neighborhood or regional parks or other recreational facilities to the point that physical deterioration will occur or be accelerated?		
14. Transportation/Traffic – Would the project:		
(a) Cause an increase in traffic (i.e., result in an increase in vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?		
(b) Cause, either individually or cumulatively with existing traffic, a level of service standard established by the County (City) Comprehensive Plan for designated roads or by the state for any state highways		
(c) Increase hazards due to a design feature (such as sharp curves or dangerous intersections) or incompatible uses (farm equipment)?		
(d) Result in inadequate emergency access?		
(e) Result in inadequate parking capacity?		
15. Utilities and Service Systems – Would the project:		
(a) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities?		
(b) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities		
(c) Have sufficient water supplies available to serve the project from existing resources and entitlements, or are new or expanded resources needed?		
(d) Be served by a wastewater treatment provider with current or projected capacity to serve the project?		
(e) Be served by solid waste disposal facilities with adequate capacity to support the project's waste disposal needs?		
(f) Comply with federal, state and local statutes and regulations related to solid waste?		