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Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151.....1809

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People v. Oken (1958)159 Cal.App.2d 456.....1857

People v. Thomas (1992) 4 Cal.4th 206.....1861

San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District (2006) 139 Cal.App.4th 1356.....1867

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Western Security Bank v. Superior Court (1997) 15 Cal.4th 232.....1943

Code of Civil Procedure section 1230.030.....1969

Education Code section 17002.....1971

Education Code section 17565.....1977
Education Code section 17593.....1981
Education Code section 81601.....1983

California Resources Agency, CEQA Process Flowchart.....1985
School Facility Program Handbook, Office of Public School Construction, May 2008.....1987

SixTen and Associates
Mandate Reimbursement Services

Exhibit A

ITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
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E-Mail: Kbpsixten@aol.com

September 25, 2003

Certified Mail : 7001 0360 0000 5999 8935
1 of 3 Boxes

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED
OCT 0 1 2003
COMMISSION ON
STATE MANDATES

Re: TEST CLAIM OF Clovis Unified School District
Statutes of 2002/Chapter 1121
California Environmental Quality Act (CEQA)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Clovis Unified School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William C. McGuire,
Associate Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, California 95811-0599

AND Thomas J. Donner, Executive Vice President,
Business and Administration
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

The Commission regulations provide for an informal conference of the interested parties

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

For Keith B. Petersen

C: William C. McGuire, Associate Superintendent
Clovis Unified School District

Thomas J. Donner, Executive Vice President,
Business and Administration
Santa Monica Community College District

CEQA 03 tc 17

$0 10/3/03

Commission on State Mandates
Test Claim Completeness Checklist

X = Requirement was not met. Test claim is deemed incomplete.

Title 2 California Code of Regulations, Section 1183 - Test Claim Requirements.

(d) Content of a Test Claim. All test claims, or amendments thereto, shall be filed on a form provided by the commission. All test claims or amendments thereto shall contain at least the following elements and documents:

✓ (d)(1) Requirement No. 1 - A copy of the statute, or executive order alleged to contain or impact a mandate.

✓ (d)(1) Requirement No. 2 - The specific sections of chaptered bill or executive order alleged to contain a mandate must be identified.

✓ (d)(2) Requirement No. 1 - A copy of relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate and a copy of administrative decisions and court decisions that may impact the alleged mandate.

___ (d)(2) Requirement No. 2 - The specific chapters, articles, sections, or page numbers must be identified.

✓ (d)(3) Requirement No. 1 - A written narrative which includes a detailed description of:

___ (A) What activities were required under prior law or executive order, and

___ (B) What activities are required under the statute or executive order alleged to contain or impact a mandate and

___ (C) How any increased level of service and/or cost was incurred or is expected to be incurred.

✓ (d)(4) Requirement No. 1 - If the narrative describing an alleged mandate involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by documentary evidence which shall be submitted with the test claim.

___ (d)(4) Requirement No. 2 - All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.

___ (d)(5) Requirement No. 1 - A statement of actual and/or estimated costs which result from the alleged mandate should be identified by function and by fiscal year.

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

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OCT 0 1 2003

COMMISSION ON STATE MANDATES

Claim No. 03-TC-17

TEST CLAIM FORM

Local Agency or School District Submitting Claim

CLOVIS UNIFIED SCHOOL DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Claimant Address

Clovis Unified School District
1450 Herndon Avenue
Clovis, California 93611-0599

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network c/o School Services of California 1121 L Street, Suite 1060 Sacramento, CA 95814	Voice: 916-446-7517 Fax: 916-446-2011

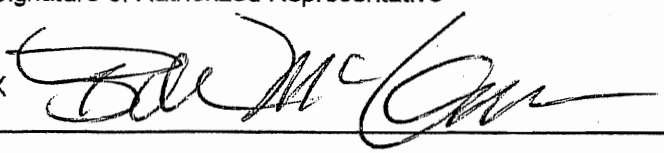
This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of theGovernment Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

California Environmental Quality Act (CEQA)
(See Attached)

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
William C. McGuire Associate Superintendent	Voice: (559) 327-9110 Fax: (559) 327-9129

Signature of Authorized Representative	Date
X 	September 22, 2003

Attachment to COSM Form 2 (1/91)
Test Claim of Clovis Unified School District
Chapter 1121, Statutes of 2002
California Environmental Quality Act (CEQA)

Copies of Statutes Cited

Chapter 1121, Statutes of 2002
Chapter 1052, Statutes of 2002
Chapter 1016, Statutes of 2002
Chapter 867, Statutes of 2001
Chapter 738, Statutes of 2000
Chapter 415, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 547, Statutes of 1996
Chapter 444, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 801, Statutes of 1995
Chapter 1294, Statutes of 1994
Chapter 1230, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1131, Statutes of 1993
Chapter 1130, Statutes of 1993
Chapter 375, Statutes of 1993
Chapter 1212, Statutes of 1991
Chapter 1183, Statutes of 1991
Chapter 905, Statutes of 1991
Chapter 659, Statutes of 1989
Chapter 626, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 85, Statutes of 1985
Chapter 1514, Statutes of 1984
Chapter 571, Statutes of 1984
Chapter 967, Statutes of 1983
Chapter 1200, Statutes of 1977
Chapter 1312, Statutes of 1976
Chapter 222, Statutes of 1975
Chapter 1154, Statutes of 1972
Chapter 1433, Statutes of 1970

Executive Orders

California State Clearinghouse Handbook - 2000

Public Resources Code Sections

21002.1	21092	21153
21003	21092.1	21154
21003.1	21092.2	21157
21080.09	21092.3	21157.1
21080.1	21092.4	21157.5
21080.3	21092.5	21158
21080.4	21092.6	21161
21081	21094	21165
21081.6	21100	21166
21082	21102	21167
21082.1	21150	21167.6
21082.2	21151	21167.6.5
21083	21151.2	21167.8
21083.2	21151.8	21168.9
21091	21152	

Education Code Section 17025

Government Code Sections 66031 and 66034

California Code of Regulations, Title 5
Sections14011 and 57121

Calfornia Code of Regulations, Title 14

15002	15073	15122	15153
15004	15073.5	15123	15162
15020	15074	15124	15164
15021	15074.1	15125	15165
15022	15075	15126	15167
15025	15081.5	15126.2	15168
15041	15082	15126.4	15176
15042	15084	15126.6	15177
15043	15085	15128	15178
15050	15086	15129	15179
15053	15087	15130	15184
15060	15088	15132	15185
15061	15088.5	15140	15186
15062	15089	15142	15201
15063	15090	15143	15203
15064	15091	15145	15205
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15064.7	15093	15148	15208
15065	15094	15149	15223
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15071	15100	15152	15367
15072	15104		

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	
	)	No. CSM _____
Clovis Unified School District	)	
	)	Chapter 1121, Statutes of 2002
	)	Chapter 1052, Statutes of 2002
	)	Chapter 1016, Statutes of 2002
Test Claimant	)	Chapter 867, Statutes of 2001
	)	Chapter 738, Statutes of 2000
	)	Chapter 415, Statutes of 1997
	)	Chapter 799, Statutes of 1996
	)	Chapter 547, Statutes of 1996
	)	Chapter 444, Statutes of 1996
	)	Chapter 277, Statutes of 1996
	)	Chapter 801, Statutes of 1995
	)	Chapter 1294, Statutes of 1994
	)	Chapter 1230, Statutes of 1994
	)	Chapter 300, Statutes of 1994
	)	Chapter 1131, Statutes of 1993
	)	Chapter 1130, Statutes of 1993
	)	Chapter 375, Statutes of 1993
	)	Chapter 1212, Statutes of 1991
	)	Chapter 1183, Statutes of 1991
	)	Chapter 905, Statutes of 1991
	)	Chapter 659, Statutes of 1989
	)	Chapter 626, Statutes of 1989
	)	Chapter 1452, Statutes of 1987
	)	Chapter 85, Statutes of 1985
	)	(Continued on next Page)
	)	
	)	California Environmental Quality Act (CEQA)
	)	
	)	TEST CLAIM FILING

Chapter 1514, Statutes of 1984
Chapter 571, Statutes of 1984
Chapter 967, Statutes of 1983
Chapter 1200, Statutes of 1977
Chapter 1312, Statutes of 1976
Chapter 222, Statutes of 1975
Chapter 1154, Statutes of 1972
Chapter 1433, Statutes of 1970

Public Resources Code Sections

21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4, 21081, 21081.6, 21082, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5, 21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152, 21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6, 21167.6.5, 21167.8, and 21168.9

Education Code Section

17025

Government Code Sections

66031, 66034

California Code of Regulations
Title 5

Sections 14011 and 57121

California Code of Regulations
Title 14

Sections 15002, 15004, 15020, 15021, 15022, 15025, 15041, 15042, 15043, 15050, 15053,

)	15060, 15061, 15062, 15063,
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)	15089, 15090, 15091, 15092,
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)	15176, 15177, 15178, 15179,
)	15184, 15185, 15186, 15201,
)	15203, 15205, 15206, 15208,
)	15223, 15225, and 15367
)	
)	Executive Orders
)	
)	California State Clearinghouse
)	Handbook - 2000
)	

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Clovis Unified School District is a "school district" as defined in

Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts, county offices of education, and community college districts to comply with the requirements of the California Environmental Quality Act.

SECTION 1. LEGISLATIVE HISTORY

Government Code

Chapter 9.3 of the Government Code, commencing with Section 66030, governs the Mediation and Resolution of Land Use Disputes.

Chapter 799, Statutes of 1996, amended Government Code Section 66031.[2]

---

[1] Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

[2] Government Code Section 66031, added by Chapter 300, Statutes of 1994, Section 1, as amended by Chapter 799, Statutes of 1996, Section 7:

"(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

Subdivision (a)(1) provides that any act or decision of a public agency made pursuant to

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending."

the California Environmental Quality Act (Division 13 (commencing with Section 21000 of the Public Resources Code) is subject to a mediation proceeding conducted pursuant to this Chapter. Subdivision (b) provides that, within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator. Subdivision (d) provides that, if the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed.

Chapter 300, Statutes of 1994, Section 1, added Government Code Section 66034[3] and provides that, if the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court.

Chapter 1016, Statutes of 2002, amended Government Code Section 66037[4] and

---

[3] Government Code Section 66034, added by Chapter 300, Statutes of 1994, Section 1:

"If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court."

[4] Government Code Section 66037, added by Chapter 300, Statutes of 1994, Section 1, as amended by Chapter 1016, Statutes of 2002, Section 9:

"No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or

provides a sunset date to the chapter No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

Education Code

Chapter 277, Statutes of 1996, Section 2, added Education Code Section 17025[5]. Subdivision (a) provides that the board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. Subdivision (b) requires that the board, or the self-certifying

---

deletes this section."

[5] Education Code Section 17025, added by Chapter 277, Statutes of 1996. Section 2:

"(a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable, shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13 (commencing with Section 21000) of the Public Resources Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district under this chapter."

district, as applicable, shall certify the compliance of a project with Division 13 (commencing with Section 21000) of the Public Resources Code. Subdivision (b) also provides that notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district.

Part A - Public Resources Code

Division 13 (commencing with Section 21000) of the Public Resources Code sets forth the California Environmental Quality Act.[6]

Chapter 1433, Statutes of 1970, Section 1, added Public Resources Code Section 21000 which states the legislative intent concerning environmental quality.

Chapter 1433, Statutes of 1970, Section 1, added Public Resources Code Section 21001 which states additional intentions of the Legislature concerning environmental quality.

Chapter 1514, Statutes of 1984, Section 1, added Public Resources Code Section 21001.1 and states the further findings of the Legislature and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

Chapter 1230, Statutes of 1994, Section 1, last amended Public Resources Code

[6] Copies of all Public Resources Code sections cited below are attached hereto as Exhibit 4 and are incorporated herein by reference.

Section 21002.1 [added in 1976]. Subdivision (a) provides that the purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided. Subdivision (b) provides that each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so. Subdivision (c) provides that if economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations. Subdivision (d) provides that in applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153. Subdivision (e) provides that to provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance

with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant.

Chapter 1130, Statutes of 1993, Section 2, amended Public Resources Code Section 21003 [added in 1976] and sets forth further legislative findings and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process

be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

Chapter 85, Statutes of 1985, Section 1, added Public Resources Code Section 21003.1 and sets forth the findings of the Legislature and declares it is the policy of the state that:

(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

Chapter 1312, Statutes of 1976, Section 3, amended Public Resources Code Section 21050 [added in 1970] and provides that Division 13 of the Public Resources Code shall be known and may be cited as the California Environmental Quality Act.

Chapter 1312, Statutes of 1976, Section 5, amended Public Resources Code Section 21061 [added in 1972] and provides the definition for "environmental impact report".

Chapter 222, Statutes of 1975, Section 1, amended Public Resources Code Section 21062 [added in 1972] and provides the definition for "local agency" as any public agency other than a state agency, board, or commission.

Chapter 1154, Statutes of 1972, Section 1, added Public Resources Code Section 21063 and provides that "public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

Chapter 1312, Statutes of 1976, Section 6, added Public Resources Code Section 21064 and provides that a "negative declaration" means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

Chapter 1230, Statutes of 1994, Section 3, amended Public Resources Code Section 21064.5 [added in 1993] and provides that a "mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment

would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Chapter 1230, Statutes of 1994, Section 4, amended Public Resources Code Section 21065 [added in 1972] to define "project" to mean an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Chapter 1154, Statutes of 1972, Section 1, added Public Resources Code Section 21067 and provides that "lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

Chapter 967, Statutes of 1983, Section 1, added Public Resources Code Section 21068.5 and defines "tiering" or "tier" to mean the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports

which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

Chapter 1312, Statutes of 1976, Section 7.1, added Public Resources Code Section 21069 which defines "responsible agency" to mean a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

Chapter 547, Statutes of 1996, Section 1, amended Public Resources Code Section 21080 [added in 1983]. Subdivision (a), provides that, except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps. Subdivision (b) sets forth a list of projects to which the division does not apply.

Chapter 659, Statutes of 1989, Section 1, added Public Resources Code Section 21080.09. Subdivision (a) provides that, for purposes of this section, the following definitions apply:

(1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.

(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus of public

higher education.

(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus of public higher education in the environmental impact report prepared for the long range development plan for the campus.

(c) The approval of a project on a particular campus of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses, provided that any such plans shall become effective for a campus only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus, and addressed as required by this division.

Chapter 1230, Statutes of 1994, Section 6, amended Public Resources Code Section 21080.1 [added in 1977]. Subdivision (a) provides that the lead agency shall be responsible for determining whether an environmental impact report, a negative

declaration, or a mitigated negative declaration shall be required for any project which is subject to this division.

Chapter 1130, Statutes of 1993, Section 5, amended Public Resources Code Section 21080.3 [added in 1977]. Subdivision (a) provides that, prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency. Subdivision (b) provides that, in order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies for a proposed project.

Chapter 738, Statutes of 2000, Section 1, amended Public Resources Code Section 21080.4 [added in 1977]. Subdivision (a) provides that, if a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Subdivision (b) provides that, to expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by

law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

Chapter 1294, Statutes of 1994, Section 2, amended Public Resources Code Section 21081 [added in 1976] and provides that no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly

trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

Chapter 1294, Statutes of 1994, Section 4.5, amended Public Resources Code Section 21081.6 [added in 1988]. Subdivision (a) provides that, when making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

Subdivision (b) requires that a public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.

Chapter 1312, Statutes of 1976, Section 9.5, amended Public Resources Code

Section 21082 [added in 1972] to require all public agencies adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division.

Chapter 1052, Statutes of 2002, Section 1, amended Public Resources Code Section 21082.1 [added in 1976]. Subdivision (a), provides that any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency. Subdivision (c) requires that the lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

Chapter 1131, Statutes of 1993, Section 7, amended Public Resources Code Section 21082.2 [added in 1984]. Subdivision (a) requires a lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record. Subdivision (d) requires a lead agency to prepare an environmental impact report if there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment.

Chapter 1052, Statutes of 2002, Section 2, amended Public Resources Code Section 21083 [added in 1972] to require public agencies to implement the guidelines developed by the Office of Planning and Research. The guidelines were to specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment", and include procedures for determining the lead agency pursuant to the provisions of Section 21165.

Chapter 375, Statutes of 1993, Section 1, amended Public Resources Code

Section 21083.2 [added in 1982]. Subdivision (a) provides that, as part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. Subdivision (b) provides that, if it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Subdivision (c) provides that, to the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. Subdivision (g) provides that, as used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person. Subdivision (i) provides that, as part of the objectives, criteria,

and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

Chapter 1052, Statutes of 2002, Section 3, amended Public Resources Code Section 21091 [added in 1989]. Subdivision (a) provides that the public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies. Subdivision (b) provides that the public review period for a proposed negative declaration or proposed mitigated negative declaration shall not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies. Subdivision (c) provides that, notwithstanding subdivisions (a) and (b), if a draft environmental impact

report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse. Subdivision (d)(1) requires the lead agency to consider any comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period. Subdivision (2)(A) requires a lead agency to evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period. Subdivision (e)(3) provides that any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

Chapter 1130, Statutes of 1993, Section 12, amended Public Resources Code Section 21092 [added in 1976]. Subdivision (a) provides that any lead agency which is preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 shall provide public notice of that fact within a

reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration. Subdivision (b)(1) requires the notice to specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review. Subdivision (b)(3) requires the notice required by this section to be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

Chapter 1514, Statutes of 1984, Section 7, added Public Resources Code Section 21092.1 to provide that when significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092, and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

Chapter 867, Statutes of 2001, Section 3, amended Public Resources Code Section 21092.2 [added in 1989] to provide that the notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency.

Chapter 1130, Statutes of 1993, Section 13, amended Public Resources Code Section 21092.3 [added in 1989] requires that the notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days.

Chapter 626, Statutes of 1989, Section 2, added Public Resources Code Section 21092.4. Subdivision (a) provides that, for a project of statewide, regional, or areawide

significance, the lead agency shall consult with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

Chapter 905, Statutes of 1991, Section 2, added Public Resources Code Section 21092.5. Subdivision (a) provides that, at least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Subdivision (b) requires the lead agency to notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared.

Chapter 1212, Statutes of 1991, Section 3, added Public Resources Code Section 21092.6. Subdivision (a) requires the lead agency to consult the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list. The lead agency

shall indicate whether a site is on any list not already identified by the applicant, specify the list, and include the information in the statement required pursuant to subdivision (f) of Section 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. Subdivision (b) provides that if a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency did not accurately specify or did not specify any list pursuant to subdivision (a), the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision.

Chapter 1294, Statutes of 1994, Section 6, amended Public Resources Code Section 21094 [added in 1984]. Subdivision (a) provides that, where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of

detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project. Subdivision (b) provides that the section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166. Subdivision (c) provides that, for purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report. Subdivision (d) provides that all public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081. Subdivision (e) provides that when tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

Chapter 1230, Statutes of 1994, Section 9, amended Public Resources Code Section 21100 [added in 1970]. Subdivision (a) requires all lead agencies to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact

report on any project which they propose to carry out or approve that may have a significant effect on the environment. Subdivision (b) requires the environmental impact report to include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

Subdivision (c) requires that the report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

Chapter 1154, Statutes of 1972, Section 3, amended Public Resources Code Section 21102 [added in 1970] and provides that no state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes

expenditures of or expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report. Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

Chapter 1154, Statutes of 1972, Section 10, amended Public Resources Code Section 21150 [added in 1970] to provide that state agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

Chapter 1121, Statutes of 2002, Section 2, amended Public Resources Code Section 21151 [added in 1970]. Subdivision (a) requires all local agencies to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. Subdivision (b) provides that, for purposes of this

section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5. Subdivision (c) provides that, if a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

Chapter 1452, Statutes of 1987, Section 533, added Public Resources Code Section 21151.2 which requires the governing board of each school district, before acquiring title to property for a new school site or for an addition to a present school site, to give the planning commission having jurisdiction notice in writing of the proposed acquisition. The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received.

Chapter 1183, Statutes of 1991, Section 18, amended Public Resources Code Section 21151.8 [added in 1990]. Subdivision (a) provides that no environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no such facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to

comply with this section as to the area of responsibility of any agency which does not respond within 30 days.

Chapter 1294, Statutes of 1994, Section 11, amended Public Resources Code Section 21152 [added in 1972]. Subdivision (a) provides that, whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public. Subdivision (b) provides that whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085

or 21172. Subdivision (c) requires that all notices filed pursuant to this section be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. The local agency shall retain the notice for not less than nine months.

Chapter 415, Statutes of 1997, Section 3, amended Public Resources Code Section 21153 [added in 1972]. Subdivision (a) provides that, prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. Subdivision (b) provides that, in the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report.

Chapter 1154, Statutes of 1972, Section 14, added Public Resources Code Section 21154 which provides that whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives

which will not conflict with such order.

Chapter 444, Statutes of 1996, Section 2, amended Public Resources Code Section 21157 [added in 1993]. Subdivision (a) sets forth specific projects for which a master environmental impact report may be prepared. Subdivision (a)(2) includes a project that consists of smaller individual projects which will be carried out in phases. Subdivision (b) provides that, when a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which

there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

Chapter 1294, Statutes of 1994, Section 13, amended Public Resources Code Section 21157.1 [added in 1993] to provide that the preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or

alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

Chapter 1130, Statutes of 1993, Section 18, added Public Resources Code Section 21157.5. Subdivision (a) requires that a proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effect on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public

review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

Subdivision (b) provides that, if there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

Chapter 1294, Statutes of 1994, Section 16, amended Public Resources Code Section 21158 [added in 1993]. Subdivision (a) defines a focused environmental impact report as an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report. Subdivision (c) provides that a focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse

environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

Chapter 571, Statutes of 1984, Section 2, amended Public Resources Code Section 21161 [added in 1972] provides that, whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

Chapter 1200, Statutes of 1977, Section 15, amended Public Resources Code Section 21165 [added in 1972] which provides that, when a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency; and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency may submit the question to the Office of Planning and Research, and the Office of Planning and

Research shall designate, within 21 days of receiving such request, the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

Chapter 1200, Statutes of 1977, Section 16, amended Public Resources Code Section 21166 [added in 1972] which provides that, when an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Chapter 801, Statutes of 1995, Section 1, amended Public Resources Code Section 21167 [added in 1972] which provides statutes of limitation for actions or proceedings to attack, review, set aside, void, or annul acts or decisions of a public agency on the grounds of noncompliance with this division.

Chapter 1121, Statutes of 2002, Section 4, amended Public Resources Code Section 21167.6 [added in 1984]. Subdivision (b)(1) requires a public agency to prepare

and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court. Subdivision (e) provides that the record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files

on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

Chapter 1121, Statutes of 2002, Section 5, added Public Resources Code Section 21167.6.5. Subdivision (b) requires a public agency to provide a petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

Chapter 801, Statutes of 1995, Section 2, amended Public Resources Code Section 21167.8 [added in 1984]. Subdivision (a) requires a public agency to file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. Subdivision (b), requires the parties to meet and confer regarding anticipated issues to be raised in the litigation and attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation at the time and place specified in the notice filed with the court. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation. Subdivision (d) provides that, if the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of

authority to disapprove a project than does a responsible agency.

Section 15043 (added in 1983) provides that a public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

1) There is no feasible way to lessen or avoid the significant effect; and

2) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.

Section 15044 (added in 1983 and last amended in 1986) provides that any person or entity, other than a responsible agency, may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

Section 15045 (added in 1983 and last amended in 1998), subdivision (b), provides that public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

Article 4. Lead Agency

Section 15050 (added in 1983 and last amended in 1983), subdivision (a), provides that where a project is to be carried out by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency. Subdivision (c) provides that the determination of the lead agency of whether to prepare an EIR or a negative declaration

the superior court. Subdivision (f) requires the petitioner or plaintiff to file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

Chapter 1131, Statutes of 1993, Section 9, amended Public Resources Code Section 21168.9 [added in 1984] and provides for certain orders that a court may make as a result of a trial, hearing or remand from an appellate court, including, in subdivision (a)(3) a mandate that a public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

Part B - Title 5, California Code of Regulations[7]

Section 14011, (added in 1970 and last amended in 2000), provides that a state-funded school district is defined as a school district having a project funded under Chapter 12.5 (commencing with Section 17070.10) of the Education Code. A state-funded school district, before acquiring title to real property for school use, is required to obtain written approval from the California Department of Education using

[7] Copies of these Title 5 Regulations are attached hereto as Exhibit 7 and are incorporated herein by reference.

the following procedures:

(a) Request a preliminary conference with a consultant from the School Facilities Planning Division and, in consultation, review and evaluate sites under final consideration.

(b) Contact the School Facilities Planning Division of the California Department of Education to obtain a "School Facilities Planning Division Field Site Review," form SFPD 4.0, published by the California Department of Education, as last amended in December 1999 and incorporated into this section by reference, in toto, which lists the site options in order of merit according to the site selection standards delineated in Section 14010.

(c) Prepare a statement of policies as delineated on the "School Facilities Planning Division School Site Report," form SFPD 4.02, as last amended in December 1999 and incorporated into this section by reference, in toto, covering the range and organization of grades to be served, the transportation of pupils, and the ultimate maximum pupil enrollment to be housed on the site. Prepare a statement showing how the site is appropriate in size as justified by the school district's Facilities Master Plan, including acreage increases above the California Department of Education recommendation made to compensate for off-site mitigation. A school district may choose, in place of a master plan, a developer fee justification document or a five-year plan if it addresses enrollment projections, needed schools, and site sizes.

(d) Prepare maps showing present and proposed school sites, significant roads or highways, unsanitary or hazardous installations, such as airports or industries and the indicated boundary of the pupil attendance area to be served as delineated on form SFPD 4.02.

(e) Meet with appropriate local government, recreation, and park authorities to consider possible joint use of the grounds and buildings and to coordinate the design to benefit the intended users as required by Education Code Section 35275.

(f) Give written notice to the local planning agency having jurisdiction to review the proposed school site or addition to an existing school site and request a written report from the local planning agency of the investigations and recommendations for each proposed site with respect to conformity with the adopted general plan as required by Public Resources Code Section 21151.2 and Government Code Section 65402.

(g) Comply with Education Code Sections 17212 and 17212.5, with particular emphasis upon an engineering investigation made of the site to preclude locating the school on terrain that may be potentially hazardous:

(1) The geological and soils engineering study shall address all of the following:

(A) Nature of the site including a discussion of liquefaction, subsidence or expansive soils, slope, stability, dam or flood

inundation and street flooding.

(B) Whether the site is located within a special study zone as defined in Education Code Section 17212.

(C) Potential for earthquake or other geological hazard damage.

(D) Whether the site is situated on or near a pressure ridge, geological fault or fault trace that may rupture during the life of the school building and the student risk factor.

(E) Economic feasibility of the construction effort to make the school building safe for occupancy.

(2) Other studies shall include the following:

(A) Population trends,

(B) Transportation,

(C) Water supply,

(D) Waste disposal facilities,

(E) Utilities,

(F) Traffic hazards,

(G) Surface drainage conditions, and

(H) Other factors affecting initial and operating costs.

(h) Prepare an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000 with particular attention to Section

21151.8).

(i) and (j) omitted intentionally

(k) Follow the recommendations of the State Superintendent of Public Instruction report based upon the Department of Transportation, Division of Aeronautics, findings, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Section 17215.

(l) Follow the standards for school site selection in Section 14010 of this article.

(m) Conduct a public hearing by the governing board of the school district as required in Education Code Section 17211 to evaluate the property using the standards described in Section 14010 of this article. The school district's facility advisory committee may provide an evaluation of the proposed site to the governing board.

(n) Submit the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education.

(o) Certify there are no available alternative school district-owned sites for the project deemed usable for school purposes by the California Department of Education or certify that the school district intends to sell an available alternative school district-owned site and use the proceeds from the sale for the purchase of the new school site.

Division 6, Chapter 8, Subchapter 2.

Section 57100, (added in 1974 and last amended in 1991), subdivision (a), provides that the regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (Division 13 commencing with section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code. Subdivision (b) provides that the purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of community college construction projects. Subdivision (c) provides that it is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in Division 6, Title 14, California Administrative Code, section 15000 et seq.

Section 57121, (added in 1974 and last amended in 1997), subdivision (a), provides that when reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (section 15080, Title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report. Subdivision (b) provides that the Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and

approximate location of buildings and facilities. Subdivision (c) provides that the Chancellor shall require that an Initial Study, pursuant to section 15080, title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information. Subdivision (d) provides that the Chancellor shall require that a copy of the (1) finding of Categorical Exemption (section 15023, Title 14, California Administrative Code); Negative Declaration (section 15083, Title 14, California Administrative Code); or Notice of Completion (section 15085(c), Title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans. Subdivision (e) provides that the Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 (approval by board of governors) of the Education Code. Subdivision (f) requires that the Chancellor withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

Part C - Title 14, California Code of Regulations[8]

Section 3, Title 14, California Code of Regulations, Chapter 3, sets forth guidelines for implementation of the California Environmental Quality Act.

Article 1. General

Section 15000 (added in 1973 and last amended in 1983), provides that the

[8] Copies of all Title 14, Code of Regulations Sections cited are attached hereto as Exhibit 8 and incorporated herein by reference.

regulations contained in this chapter are prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act.

Section 15001 (added in 1975 and last amended in 1983), provided that these guidelines may be cited as the "State CEQA Guidelines".

Section 15002 (added in 1980 and last amended in 1983), subdivision (b) provides which governmental actions may take place:

1) Activities directly undertaken by a governmental agency,

2) Activities financed in whole or in part by a governmental agency, or

3) Private activities which require approval from a governmental agency.

Subdivision (d) provides that a "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. Subdivision (e) provides that a governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. Subdivision (f) provides that an environmental impact report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage. An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effort on the environment. When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative

Declaration" instead of an EIR. Subdivision (i) provides that, CEQA applies in situations where a governmental agency can use its judgement in deciding whether and how to carry out or approve a project. Subdivision (j) provides that under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project. Subdivision (k) provides that an agency will normally take up to the following three steps in deciding which document to prepare for a project subject to CEQA:

1) Examine the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may prepare a notice of exemption.

2) If the project is not exempt, the lead agency takes the second step and conducts an initial study to determine whether the project may have a significant effect on the environment.

3) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR.

Section 15004 (added in 1983 and last amended in 1998), subdivision (b), requires the preparation of EIRs and Negative Declarations as early as feasible in the planning process. Subdivision (b)(1) requires project sponsors of public projects to incorporate environmental considerations into project conceptualization, design and planning and recommends CEQA compliance prior to acquisition of a site for a public project. Subdivision (c) provides that the environmental document preparation and

review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency.

Section 15005 (added in 1983 and last amended in 1983), provides definitions of terms to be used in the chapter.

Article 2. General Responsibilities.

Section 15020 (added in 1983 and last amended in 1983) requires that each public agency is responsible for complying with CEQA and these Guidelines.

Section 15021 (added in 1983), subdivision (a), provides that CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible. In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage. Subdivision (b) provides that an agency may consider specific economic, environmental, legal, social, and technological factors, when deciding whether changes in a project are feasible. Subdivision (c) provides that the duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091. Subdivision (d) provides that a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors.

Section 15022 (added in 1983), requires each pubic agency to adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures

should at least contain provisions for:

1) Identifying the activities that are exempt from CEQA, which are provided.

2) Conducting initial studies.

3) Preparing negative declarations.

4) Preparing draft and final EIRs.

5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

6) Assuring adequate opportunity and time for public review and comment on the Draft EIR of Negative Declaration.

7) Evaluating and responding to comments received on environmental documents.

8) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

9) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

10) Filing documents required or authorized by CEQA and these Guidelines.

11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

12) Assigning responsibility for specific functions to particular units of the public agency.

13) Providing time periods for performing functions under CEQA.

Subdivision (b) provides that any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district. Subdivision (c) requires that public agencies revise their implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments. Subdivision (d) provides that in adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions which are necessary to tailor the general provisions of these guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

Section 15023 (added in 1983 and last amended in 1986), subdivision (c), provides that the State Clearinghouse in the Office of Planning and Research (OPR) shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment. Subdivision (d) provides that upon request of a Lead Agency, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project. Subdivision (e) provides that OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 30 days after

receiving a notice of preparation. Subdivision (f) provides that OPR shall resolve disputes as to which agency is the lead agency for a project. Subdivision (g) provides that OPR shall receive and file all notices of completion, and determination, and exemption.

Section 15025 (added in 1983), subdivision (a), provides that a public agency may assign specific functions to its staff to assist in administering CEQA. Subdivision (b) provides that the decision making body of a public agency shall not delegate the following functions:

1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

2) The making of findings as required by Sections 15091 and 15093.

Article 3. Authorities Granted to Public Agencies by CEQA

Section 15041 (added in 1983 and last amended in 1998) provides that within the limitations described in Section 15040 a lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

Section 15042 (added in 1983), provides that a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader

shall be final and conclusive for all persons, including responsible agencies, unless:

1) The decision is successfully challenged, as provided in Section 21167 of the Public Resources Code,

2) Circumstances or conditions change, as provided in Section 15162, or

3) A responsible agency becomes a lead agency under Section 15062.

Section 15051 (added in 1983) provides that where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

1) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

2) If the project is to be carried out by a non-governmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

3) Where more than one public agency equally meet the criteria in subsection (2), the agency which will act first on the project in question shall be the lead agency.

4) Where the provisions of the above subsections leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency.

Section 15053 (added in 1983), subdivision (a), provides that if there is a dispute

over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. Subdivision (b) requires OPR to designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

Section 15060 (added in 1983 and last amended in 1998), subdivision (c), provides that a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

1) The activity does not involve the exercise of discretionary powers by a public agency;

2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

3) The activity is not a project as defined in Section 15378.

Subdivision (d) provides that if the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process.

Section 15061 (added in 1983 and last amended in 1998), subdivision (a), provides that once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA. Subdivision (b) provides that a project is exempt from CEQA if:

1) The project is exempt by a statute.

2) The project is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

4) The project will be rejected or disapproved by a public agency.

Subdivision (c) provides that each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. Subdivision (d) provides that after determining that a project is exempt, the agency may prepare a notice of exemption.

Section 15062 (added in 1983 and last amended in 1998), subdivision (a), provides that when a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such notice shall include a brief description of the project, a finding that the project is exempt from CEQA, and a brief statement of reasons to support the finding. Subdivision (b) provides that a notice of exemption may be filled out and may accompany the project application through the approval process. Subdivision (c) provides that when a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption. When a local agency files this notice, the notice of exemption is

filed with the county clerk of each county in which the project will be located. Copies of such notices will be available for public inspection and shall be retained for not less than 9 months. Subdivision (d) provides that the filing of a Notice of Exemption and the posting on the list of notices start a 35-day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA.

Section 15063 (added in 1983 and last amended in 1998), subdivision (a), provides that, following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. Subdivision (b) provides that:

1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

a) prepare an EIR, or

b) use a previously prepared EIR, or

c) determine which of a project's effects were adequately examined by an earlier EIR or negative declaration.

2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

Subdivision (c) provides that the purposes of an initial study are to:

1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

2) Enable an applicant or lead agency to modify a project, mitigating adverse impact before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

3) Assist the preparation of an EIR, if one is required;

4) Facilitate environmental assessment early in the design of a project;

5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

6) Eliminate unnecessary EIRs;

7) Determine whether a previously prepared EIR could be used with the project.

Subdivision (d) provides that an initial study shall contain in brief form:

1) A description of the project including the location of the project;

2) An identification of the environmental setting;

3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries.

4) A discussion of ways to mitigate the significant effects identified, if any;

5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

6) The name of the person or persons who prepared or participated in the initial study.

Subdivision (g) provides that, as soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared.

Subdivision 15064 (added in 1983 and last amended in 2001), subdivision (a)(1), provides that, if there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR. Subdivision (a)(2) provides that, when a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding consideration under Section 15093 for the project. Subdivision (c) provides that in determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected. Subdivision (d) requires the lead agency to consider direct physical changes in the environment which may be caused by the project and reasonablely foreseeable indirect physical changes in the environment which may be caused by the project. Subdivision (e) provides that economic and social changes resulting from a project shall not be treated as significant effects on the environment. Subdivision (f) provides that the

decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency. Subdivision (g) provides that after application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle; If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR. Subdivision (i) provides that:

1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable.

2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant.

3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.

4) A lead agency may determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de

minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project.

5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Section 15064.5 (added in 1998), subdivision (a), provides examples of the term "historical resources". Subdivision (b) provides that a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. A lead agency is required to identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource and ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures. Subdivision (c) provides that CEQA applies to effects on archaeological sites. Subdivision (d) provides that when an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage commission as provided in Public Resources Code section 5097.98. Subdivision (e) provides that in the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken;

1) There shall be no further excavation or disturbance of the site or any

nearby area reasonably suspected to overlie adjacent human remains until the proper steps are taken.

2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

Subdivision (f) provides that as part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction.

Section 15064.7 (added in 1998), subdivision (a), provides that each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. Subdivision (b) provides that thresholds of significance to be adopted for general use as part of lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

Section 15065 (added in 1983 and last amended in 1998) requires a lead agency to find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

1) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

3) The project has possible environmental effects which are individually limited by cumulatively considerable.

4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Article 6. Negative Declaration Process

Section 15070 (added in 1983 and last amended in 1997), requires that a public agency shall prepare, or have prepared, a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

b) The initial study identifies potentially significant effects, but

(1) Revisions in the project plans or proposals made by or agreed to by

the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

Section 15071 (added in 1983) provides that a negative declaration circulated for public review shall include:

a) A brief description of the project, including a commonly used name for the project, if any;

b) The location of the project, preferably shown on a map, and the name of the project proponent;

c) A proposed finding that the project will not have a significant effect on the environment;

d) An attached copy of the initial study documenting reasons to support the finding; and

e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

Section 15072 (added in 1983 and last amended in 1997), subdivision (a), requires a lead agency to provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and

the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105. Subdivision (b) requires the lead agency to mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project.

2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

3) Direct mailing to the owners and occupants of property contiguous to the project.

Subdivision (e) provides that for a project of statewide, regional, or area wide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. Subdivision (f) provides that a notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

1) A brief description of the proposed project and its location.

2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration.

3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review.

5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

6) Other information specifically required by statute or regulation for a particular project or type of project.

Section 15073 (added in 1983 and last amended in 1997), subdivision (a), requires the lead agency to provide a public review period pursuant to Section 15105 of not less than 20 days. Subdivision (b) provides that when a proposed negative

declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. Subdivision (c) provides that a copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project. Subdivision (d) provides that where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or area wide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies. Subdivision (e) provides that the lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared.

Section 15073.5 (added in 1998), subdivision (a), provides that a lead agency is required to re-circulate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to it adoption. Subdivision (b) provides the meaning of a "substantial revision" of the negative declaration. Subdivision (c) provides the

circumstances in which re-circulation is not required. Subdivision (d) provides that if during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project.

Section 15074 (added in 1983 and last amended in 1997), subdivision(b), provides that, prior to approving a project, the decision making body of the lead agency shall consider the proposed negative declaration together with any comments received during the public review process. Subdivision (c) provides that, when adopting a mitigated negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other materials which constitute the record of proceedings upon which its decision is based. Subdivision (d) provides that, when adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

Section 15074.1 (added in 1997), subdivision (a), provides that as a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Subdivision (b)

provides that, prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

1) Hold a public hearing on the matter.

2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

Subdivision (c) provides that no re-circulation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

Section 15075 (added in 1983 and last amended in 1998), subdivision (a), provides that, after deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved, the lead agency shall file a notice of determination. For projects with phases, the lead agency shall file a notice of determination after deciding to carry out or approve each phase. Subdivision (b) provides that the notice of determination must include:

1) An identification of the project including its common name where possible, and its location.

2) A brief description of the project.

3) The date on which the agency approved the project.

4) The determination of the agency that the project will not have a significant

effect on the environment.

5) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

6) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

Subdivision (c) provides that if the lead agency is a state agency, the lead agency shall file the notice of determination with OPR. Subdivision (d) provides that if the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. Subdivision (e) provides that all notices filed pursuant to this section shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt. Subdivision (f) provides that public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet.

Article 7. EIR process

Section 15080 (added in 1983 and last amended in 1983) provides that to the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

Section 15081 (added in 1983) provides that the EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards

described in Section 15064.

Section 15081.5 (added in 1997), subdivision (a) provides a list of projects for which a lead agency is required to prepare, or have prepared, an EIR. Subdivision (b) provides that a lead agency shall prepare or have prepared an EIR for the selection of a California Community College campus location and approval of a long range development plan for that campus.

Section 15082 (added in 1983 and last amended in 2001), subdivision (a) provides that immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project. Subdivision (b) provides that within 30 days after receiving the notice of preparation under subdivision (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR. Subdivision (c) provides that, in order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Subdivision (d) provides that, when one or more state

agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. Subdivision (e) provides that, when the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project.

Section 15083 (added in 1983) provides that, prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. This early consultation may be called "scoping". Subdivision (c) provides that where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

Section 15084 (added in 1983), subdivision (a), provides that the draft EIR shall be prepared directly by, or under contract to, the lead agency. Subdivision (c) provides that any person may submit information or comments to the lead agency to assist in the preparation of the draft EIR. Subdivision (d) provides that the lead agency may choose one of the following arrangements, or a combination of them, for preparing a draft EIR;

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum or understanding with the

applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

Subdivision (e) provides that before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis.

Section 15085 (added in 1983 and last amended in 1986), subdivision (a), provides that as soon as the draft EIR is completed, a notice of completion must be filed with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission. Subdivision (b) provides that the notice of completion shall include:

1) A brief description of the project,

2) The proposed location of the project,

3) An address where copies of the draft EIR are available, and

4) The period during which comments will be received on the draft EIR.

Section 15086 (added in 1983 and last amended in 2001), subdivision (a), provides that the lead agency shall consult with and request comments on the draft EIR from:

1) Responsible agencies,

2) Trustee agencies with resources affected by the project, and

3) Any other state, federal , and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section

15083.5,

4) Any city or county which borders on a city or county within which the project is located, and

5) For a project of statewide, regional, or area wide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project.

Subdivision (b) provides that the lead agency may consult directly with:

1) Any person who has special expertise with respect to any environmental impact involve,

2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

Section 15087 (added in 1983 and last amended in 1997), subdivision (a), requires that the lead agency provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. This notice shall be given as provided under Section 15105. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one

area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

Subdivision (c) provides that the notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

Subdivision (d) provides that the notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

Subdivision (e) provides that in order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the Clearinghouse.

Subdivision (f) provides that public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

Subdivision (g) provides that in order to make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency. Subdivision (h) provides that public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

Section 15088 (added in 1983), subdivision (a), requires the lead agency to evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments. Subdivision (b) provides that the written response shall describe the disposition of significant environmental issues raised. In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. Subdivision (c) provides that the response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

Section 15088.5 (added in 1983 and last amended in 1998), subdivision (a), requires a lead agency to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. Subdivision (b) provides that recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. Subdivision (c) provides that if the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified. Subdivision (d) provides that recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086. Subdivision (e) provides that a decision not to recirculate an EIR must be supported by substantial evidence in the administrative record. Subdivision (f) requires that the lead agency evaluate and respond to comments as provided in Section 15088. Subdivision (g) provides that, when recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

Section 15089 (added in 1983), subdivision (a), requires that the lead agency prepare a final EIR before approving the project. Subdivision (b) provides that lead

agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

Section 15090 (added in 1983 and last amended in 1997), subdivision (a), provides that prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

Subdivision (b) provides that when an EIR is certified by a non-elected decision-making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision-making body, if one exists. Each local lead agency shall provide for such appeals.

Section 15091 (added in 1983 and last amended in 1998), subdivision (a), provides that no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Subdivision (b) provides that the findings required by subsection (a) shall be supported by substantial evidence in the record. Subdivision (c) provides that the finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives. Subdivision (d) provides that, when making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either

required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures. Subdivision (e) requires the public agency to specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

Section 15092 (added in 1983), subdivision (a), provides that after considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project. Subdivision (b) provides that a public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

Section 15093 (added in 1983 and last amended in 1998), subdivision (a),

provides that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." Subdivision (b) provides that, when the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record. Subdivision (c) provides that, if an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

Section 15094 (added in 1983 and last amended in 1997), subdivision (a), requires that the lead agency file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

Subdivision (c) provides that if a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR. Subdivision (d) provides that a notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. The local lead agency shall retain the notice for not less than 9 months. Subdivision (f) provides that

the filing of the notice of determination and the posting of such notice starts a 30-day statute of limitations on court challenges to the approval under CEQA.

Section 15095 (added in 1983) requires the lead agency to:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

Section 15097 (added in 1983 and last amended in 1998), subdivision (a), provides that this section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been

completed, the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program. Subdivision (c) provides that the public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. "Monitoring" is generally an ongoing or periodic process of project oversight. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

Subdivision (e) provides that, at its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Subdivision (g) provides that when a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

Article 8. Time Limits

Section 15100 (added in 1983 and last amended in 1983), subdivision (a), requires public agencies to adopt time limits to govern their implementation of CEQA consistent with this article.

Section 15104 (added in 1983) requires the lead agency to convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

Section 15105 (added in 1983 and last amended in 2001), subdivision (a), provides that the public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse. Subdivision (b) provides that the public review period for a proposed negative declaration or mitigated negative declaration shall be not

less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse. Subdivision (c) provides that if a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. Subdivision (d) provides that a shortened Clearinghouse review period may be granted.

Section 15112 (added in 1983), subdivision (b), provides that the project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired. Subdivision (c) provides that the statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with

Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(V), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a

formal decision by the public agency.

Article 9. Contents of Environmental Impact Reports

Section 15120 (added in 1983 and last amended in 1998), subdivision (a), provides that Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed. Subdivision (b) provides that the EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. Subdivision (c) provides that draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132. Subdivision (d) provides that no document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about

the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

Section 15122 (added in 1983) provides that an EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

Section 15123 (added in 1983), subdivision (a), provides that an EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical. Subdivision (b) provides that the summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

Section 15124 (added in 1983 and last amended in 1998) provides that the

description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact:

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is

known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

Section 15125 (added in 1983 and last amended in 1998), subdivision (a), provides that an EIR must include a description of the physical environmental conditions

in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.

Section 15126 (added in 1983 and last amended in 1998) provides that all phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

Section 15126.2 (added in 1898), subdivision (a), provides for the Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. Subdivision (b) provides for significant environmental effects which cannot be avoided if the proposed project is implemented to include any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Subdivision (c) provides for significant irreversible environmental changes which would be caused by the proposed project should it be implemented, such as uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely.

Section 15126.4 (added in 1998), subdivision (a), provides for mitigation measures in general:

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the

project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed.

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest; and

(B) The mitigation measure must be "roughly proportional" to the

impacts of the project. Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

Subdivision (b) provides for mitigation measures related to impacts on historical resources:

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted 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, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site; and/or

4. Deeding the site into a permanent conservation easement.

C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have

adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

Section 15126.6 (added in 1998), subdivision (a), provides that an EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. Subdivision (b) requires the discussion of alternatives to focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. Subdivision (c) requires the range of potential alternatives to the proposed project to include those that could feasibly accomplish most of the basic objectives of

the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Subdivision (d) requires the EIR to include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. Subdivision (e) requires the specific alternative of "no project" to also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The "no project" analysis shall discuss the existing

conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. Subdivision (f) provides for the rule of reason which requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

Section 15128 (added in 1983) requires that an EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

Section 15129 (added in 1983) requires that an EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

Section 15130 (added in 1983 and last amended in 2001), subdivision (a), requires that an EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable. Subdivision (b) provides that the discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact.

Subdivision (c) provides that with some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis. Subdivision (d) provides that previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis.

Section 15131 (added in 1983), subdivision (a), provides that economic or social effects of a project shall not be treated as significant effects on the environment. Subdivision (b) provides that economic or social effects of a project may be used to determine the significance of physical changes caused by the project.

Section 15132 (added in 1983) requires that the final EIR consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

Article 10. Considerations in Preparing EIRs and Negative Declarations

Section 15140 (added in 1983) requires that EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

Section 15141 (added in 1983) provides that the text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

Section 15142 (added in 1983) provides that an EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

Section 15143 (added in 1983) provides that the EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence.

Section 15144 (added in 1983) provides that drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

Section 15145 (added in 1983) provides that if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

Section 15146 (added in 1983) provides that the degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

Section 15147 (added in 1983) provides that the information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental

impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR.

Section 15148 (added in 1983) provides that the preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

Section 15149 (added in 1983), subdivision (b), provides that the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment.

Section 15150 (added in 1983), subdivision (a), provides that an EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Subdivision (b) provides

that where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. Subdivision (c) provides that where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. Subdivision (d) provides that where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c). Subdivision (e) provides examples of materials that may be incorporated by reference. Subdivision (f) provides that incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

Section 15151 (added in 1983) provides that an EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables

them to make a decision which intelligently takes account of environmental consequences.

Section 15152 (added in 1983 and last amended in 1998), subdivision (a), provides that "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project. Subdivision (b) provides that agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. Subdivision (d) provides that where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any

lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

Subdivision (e) provides that tiering, under this section, shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering. Subdivision (f) provides that a later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met. Subdivision (g) provides that when tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

Section 15153 (added in 1983), subdivision (a), provides that the lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Subdivision (b) provides that when a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

Subdivision (c) provides that an EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared. Subdivision (d) provides that an EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

Article 11. Types of EIRs

Section 15160 (added in 1983 and last amended in 1983) provides that lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

Section 15161 (added in 1983) provides that the most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

Section 15162 (added in 1983 and last amended in 1998), subdivision (a), provides that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency

determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Subdivision (b) provides that, if changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation. Subdivision (c) provides that once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been

certified or subsequent negative declaration adopted. Subdivision (d) provides that a subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

Section 15163 (added in 1983), subdivision (a), provides that the lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

Subdivision (b) provides that the supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised. Subdivision (c) provides that a supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087. Subdivision (d) provides that a supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR. Subdivision (e) provides that when the agency decides whether to approve the project, the decision-making body shall consider the previous

EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

Section 15164 (added in 1983 and last amended in 1998), subdivision (a), provides that the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Subdivision (b) provides that an addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred. Subdivision (c) provides that an addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration. Subdivision (d) provides that the decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project. Subdivision (e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Section 15165 (added in 1983) provides that where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project

with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

Section 15166 (added in 1983) provides that the requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

Subdivision (b) provides that where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

Section 15167 (added in 1983), subdivision (a), provides that where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity. Subdivision (b) provides that when a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project. Subdivision (c) provides that where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR. Subdivision (d) provides that an agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

Section 15168 (added in 1983), subdivision (a), provides that a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

Subdivision (b) provides that use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

Subdivision (c) provides that subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

Subdivision (d) provides that a program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

Subdivision (e) provides that when a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

Section 15169 (added in 1983), subdivision (a), provides that a public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state. Subdivision (b) provides that a master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location. Subdivision (c) outlines preparation:

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be

prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

Subdivision (d) outlines uses:

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

Section 15170 (added in 1983) provides that a lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

Article 11.5. Master Environmental Impact Report

Section 15175 (added in 1997), subdivision (a), provides that the Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to

streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

Subdivision (b) provides that a lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

Subdivision (c) provides that a lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

Section 15176 (added in 1997 and last amended in 2001) provides that a lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office-commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

Subdivision (c) provides that a description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR. Subdivision (d) provides that where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel-specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations

and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

Section 15177 (added in 1997), subdivision (a), provides that after a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review. Subdivision (b) provides that, except as provided in subsection (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from

the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project-specific effect which was not addressed as a significant effect in the Master EIR.

Subdivision (c) provides that whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR. Subdivision (d) provides that, prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087. Subdivision (e) provides that when the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

Section 15178 (added in 1997), subdivision (a), provides that when a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative

declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

Subdivision (b) requires a lead agency to prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

Subdivision (c) provides that a lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not

identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project-specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any

significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

Subdivision (d) provides that a lead agency shall file a notice of determination pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section. Subdivision (e) provides that when a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

Section 15179 (added in 1997) provides that the certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

Article 12. Special Situations

Section 15184 (added in 1983) provides that whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

Section 15185 (added in 1983), subdivision (a), provides that where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e). Subdivision (b) provides that the decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

Section 15186 (added in 1983 and last amended in 1998), subdivision (a), provides that CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials, wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will

consult with other agencies in this regard. Subdivision (b) provides that when a project located within one-fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(2) Notify the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.

Subdivision (c) provides that when the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(1) The negative declaration or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This does not include a natural gas pipeline used only to supply the school or neighborhood.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the

requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school board makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to

occupancy of the school, that the emissions have been so mitigated.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093. Subdivision (d) provides that when the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility. Subdivision (e) provides that the following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. §66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(4) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(5) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(6) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

Article 13. Review and Evaluations of EIRs and Negative Declarations

Section 15200 (added in 1983 and last amended in 1983) provides that the purpose of review of EIRs and negative declaration include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

Section 15201 (added in 1983 and last amended in 1998), provides that public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

Section 15202 (added in 1983 and last amended in 1998), subdivision (a), provides that CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications. Subdivision (b) provides that if an agency provides a public hearing on its decision to

carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing. Subdivision (c) provides that a public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities. Subdivision (d) provides that a draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public. Subdivision (e) requires that notice of all public hearings be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site. Subdivision (f) provides that a public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities. Subdivision (g) provides that there is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

Section 15203 (added in 1983) provides that the lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared. Subdivision (a) provides that public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods. Subdivision (b) provides that a review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

Section 15204 (added in 1983 and last amended in 1998), subdivision (a), provides that in reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to

conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR. Subdivision (b) provides that in reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specific effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

Subdivision (c) provides that reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence. Subdivision (d) provides that reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility. Subdivision (e) provides that this section shall not be used to restrict the

ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section. Subdivision (f) provides that, prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

Section 15205 (added in 1983 and last amended in 2001), subdivision (a), provides that draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812-3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available. Subdivision (b) provides that the following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

Subdivision (c) provides that public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available. Subdivision (d) provides that when an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review

period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency. Subdivision (e) provides that the number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance. Subdivision (f) provides that, while the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

Section 15206 (added in 1983 and last amended in 2001), subdivision (a), provides that projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

Subdivision (b) requires the lead agency to determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

Section 15208 (added in 1983) provides that comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

Section 15220 (added in 1983 and last amended in 1983) provides that this article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

Section 15221 (added in 1983), subdivision (a), provides that when a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

Subdivision (b) provides that because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

Section 15222 (added in 1983) provides that if a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR-EIS or negative declaration-

finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

Section 15223 (added in 1983) provides that when it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

Section 15225 (added in 1983 and last amended in 1997), subdivision (a), provides that where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

Section 15226 (added in 1983) provides that state and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings, and

(d) Joint environmental documents.

Section 15228 (added in 1983) provides that where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

Article 15. Litigation

Section 15230 (added in 1983) provides that litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the

Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

Section 15231 (added in 1983 and last amended in 1998) provides that a final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

Section 15232 (added in 1983) provides that in a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

Article 19. Categorical Exemptions

Section 15300 (added in 1983) provides that section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which

have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

Section 15302 (added in 1983), provides that Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

Section 15314 (added in 1983) provides that Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

Section 15320 (added in 1983) provides that Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

Section 15322 (added in 1983) provides that Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

Article 20. Definitions

Section 15350 (added in 1983) provides that the definitions contained in this article apply to terms used throughout the guidelines unless a term is otherwise defined in a particular section. Although all of these definitional sections are incorporated by reference, the following sections are particularly useful to this test claim:

Section 15367 (added in 1983) provides that "lead agency" means the public agency which has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 15051.

Section 15368 (added in 1983) provides that "local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

Section 15383 (added in 1983) provides that "state agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

Part D - Executive Orders -California State Clearinghouse Handbook

The Governor's Office of Planning and Research has published a document entitled "California State Clearinghouse Handbook" in January of 2000, a copy of which is attached hereto as Exhibit 9 and is incorporated herein by reference. This is an executive order within the meaning of Government Code Section 17516.

Negative Declaration Process

A draft Negative Declaration submitted to the State Clearing House (SCH) for state agency review must comply with the following steps:

Step 1: Submittal of Negative Declaration to State Clearinghouse. When a Negative Declaration requires state agency review, at least fifteen copies must be sent to the SCH, by the Lead Agency or by a party clearly authorized by the Lead Agency. The minimum content requirements for a Negative Declaration are:

a) Description and title of the project;

b) Location of the project, preferably shown on a map;

c) Name of the project proponent;

d) A proposed finding that the project will not have a significant effect on the environment;

e) An attached copy of the Initial Study documenting reasons to support the finding; and

f) Mitigation measures, if any, included in the project to avoid potentially significant effects.

Step 2: Distribution and Review Period. When a Negative Declaration is received by the SCH for distribution, a staff analyst assigns an SCH number to the project. The Lead Agency is required to reference any previously assigned number, if applicable. The normal review period for Negative Declarations submitted to SCH is 30 calendar days. The review period begins when SCH circulates the document, which is usually the same day it is received.

Step 3: Review of Negative Declaration. After SCH has distributed a Negative Declaration to state agencies, those agencies assign the document to staff members in either their Sacramento or regional offices for review, analysis and comment. If an extension is granted, the Lead Agency is notified.

Step 4: Negative Declaration Comments. At the end of the state review period, all comments from the reviewing state agencies are collected at SCH. A closing letter and

a complete package of comments are forwarded to the Lead Agency on the day following the close of the review period.

Step 5: Notice of Determination. Within five working days of approving a project for which a Negative Declaration has been adopted, a local Lead Agency must file a Notice of Determination (NOD) with the county clerk of the county or counties where the project is located. If a project requires discretionary approval from a state agency, the NOD also must be filed with SCH. If the Lead Agency is a state agency, the NOD must be filed with the SCH. The information required in a Notice of Determination is listed in Section 15075 of the CEQA Guidelines (Title 14). The filing of the NOD begins a 30-calendar-day statute of limitations on court challenges to the project approval under CEQA.

The Negative Declaration process also provides some "helpful hints" to follow which include:

a) Submit one completed NOC with the Negative Declaration.

b) Submit 15 copies of each Negative Declaration. Submit additional copies if you have identified more than 15 state agencies that should receive a copy.

c) Include a cover letter if you have special instructions for the SCH staff

d) Assume that the 30-day review period will commence within 24 hours of receipt by SCH.

e) Plan ahead if you will need a shortened review period by calling SCH before mailing your document.

f) Call SCH in advance if you have any questions regarding these procedures.

EIR Process

Step 1: Notice of Preparation. To assist the EIR scoping process, a Lead Agency must circulate a Notice of Preparation (NOP) to all Responsible and Trustee Agencies advising them of its intention to prepare a Draft EIR. Lead Agencies are required to send copies of a NOP directly to all Responsible and Trustee Agencies. When there is a Responsible or Trustee state agency involved in a project, a copy of the NOP also

must be sent to the SCH. The Lead Agency's distribution list for the NOP should be attached to SCH's copy of the NOP. The minimum content requirements for a NOP are:

a) Description of the project;

b) Location of the project, indicated either on an attached map (preferably a topographical map), or by a street address in an urbanized area;

c) Salient environmental issues; and

d) Probable environmental effects of the project.

Step 2: SCH Number and Distribution. When a NOP is submitted to SCH, a number is assigned to the project. SCH receipt of the NOP will be acknowledged by letter to the Lead Agency, noting the SCH number that is to be used for all subsequent environmental documents for that project. A state agency distribution list will be sent with the acknowledgment letter noting any agencies to which SCH has forwarded a copy of the NOP.

Step 3: NOP Review Period. Responsible agencies have a maximum of 30 calendar days from receipt of a NOP to comment on a proposed project (Section 15103). When a state agency comments on a NOP, a copy of the comment letter must

be submitted to SCH. The SCH does not compile and transmit state agency comment letters on NOP's after the end of the 30-day NOP commend period. Each commenting state agency must send its comment letter directly to the Lead Agency, with a copy to SCH.

Step 4: Submittal of Draft EIR to SCH. When a Draft EIR requires state agency review, at least fifteen copies must be submitted to SCH together with one copy of the NOC form. Lead Agencies are required to submit their Draft EIR and NOC form to SCH when:

a) The Lead Agency is a state agency,

b) The project involves one or more Responsible or Trustee state agencies, or

c) The project has statewide, regional, or area wide significance.

Submittal of Draft EIRs to SCH must be done by the Lead Agency or by a party clearly authorized by the Lead Agency.

Step 5: Draft EIR Review Period. When a Draft EIR is submitted to SCH for distribution, the SCH number assigned to the NOP should be referenced on the NOC

and/or EIR title page. The state review period typically starts on the same date the Draft EIR is submitted to the SCH if the document is complete, and received by noon.

Step 6: Review of Draft EIR. When the Draft EIR is received by reviewing state agencies, those agencies assign the document to staff members for review, analysis and comment.

Step 7: Draft EIR Comments. On the day following the close of the review period, a complete package of comments is forwarded to the Lead Agency by SCH.

Step 8: Final EIR. After receiving all public comments, including those of state agencies, the Lead Agency must prepare written responses and include them in the Final EIR. The Lead Agency must then certify the Final EIR before approving the project.

Step 9: Notice of Determination. Within five working days of approving a project for which an EIR was prepared, a local Lead Agency must file a Notice of Determination (NOD) with the county clerk of the county or counties where the project will be located. If the project requires discretionary approval from a state agency, the NOD also must be filed with SCH. State Lead Agencies must file the NOD with the SCH. State Lead

Agencies must file the NOD with the SCH. The NOD must be signed by the proper authority of the Lead Agency and completed in full before SCH will post it.

The EIR process provides some "helpful hints" which include:

a) Send the NOP to Responsible and Trustee agencies using certified mail or a similar method to ensure documentation of receipt.

b) Submit one NOC with your Draft EIR.

c) Submit 15 copies of each Draft EIR. Submit additional copies if you have identified more than 15 state agencies that should receive a copy.

d) Include a cover letter to SCH if you have special instructions.

e) Advise SCH in advance of Draft EIRs that may require special handling or oversized packaging.

f) Call SCH in advance if you have any questions regarding these procedures.

g) SCH does not retain copies of all environmental documents it receives.

Shortened Review Process

SCH may shorten the normal review periods for draft Negative Declarations and EIRs, when requested by the Lead Agency. It is strongly advised that the Lead Agency contact the SCH prior to submitting a request for shortened review. Written requests for shortened reviews are required to be submitted to SCH together with the required 15 copies of the draft environmental document. The request letter must explain why the shortened review is needed and identify prior approval from Responsible state agencies. A request for a shortened review period will only be considered prior to the start of the state review period. SCH will consider a request for a shortened review if one or more of the following criteria are met:

1) The Lead Agency is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

2) The public project applicant is under severe time constraints with regard to obtaining financing or exercising options which cannot be met without shortening the review period.

3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

4) The health and safety of the community would be at risk unless the project is approved expeditiously.

5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

The Lead Agency shall provide evidence that there has been prior consultation with Responsible and Trustee state agencies. In the case of a Draft EIR, the Lead Agency should have sent a NOP to the Responsible and Trustee state agencies. For Negative Declarations, the Lead Agency should have previously consulted, formally or informally, with Responsible and Trustee state agencies. Before submitting a shortened review request, the Lead Agency must have obtained verbal or written approval for a shortened review period from Responsible and Trustee state agencies. The request letter from the

Lead Agency must identify which state agencies have been contacted and the agencies' responses to the request.

Shortened review request procedures include:

1) The request must be made to SCH in writing by the decision-making body of the Lead Agency, or an authorized representative of the Lead Agency, and shall be made on Lead Agency letterhead. When submitted by a representative, a copy of the resolution or ordinance from the decision-making body of the Lead Agency delegating authority should be attached.

2) The request must explain the "exceptional circumstances" for making the request.

3) The request must be accompanied by 15 copies of the environmental document.

4) The request will not be approved if the project has statewide, regional, or area wide significance.

5) SCH approval of a shortened review period must be granted before issuing the public notice of availability.

6) The public review period must be at least as long as the review period set by SCH.

7) The review period for a Negative Declaration shall not be shorter than 20 days. The Lead Agency must specify the requested length of the shortened review period.

8) The review period for a Draft EIR shall not be shorter than 30 days. The Lead Agency must specify the requested length of the shortened review period.

9) The Lead Agency may use the Shortened Review Application form contained in this Handbook.

General Activities and Services

The SCH provides services that can be useful to those involved in the land use field which include: posting of certain notices, publication of a bimonthly newsletter, and providing a computer database search service.

Filing Environmental Notices

As of January 1, 1985, the process for filing environmental notices under CEQA was changed in order to centralize and simplify the process. Notices of Completion, Exemption, and Determination that previously were filed with the Resources Agency are now filed with the Governor's Office of Planning and Research.

Notice of Completion

CEQA requires that a Notice of Completion be filed at SCH by a public agency whenever a Draft EIR is completed. SCH requests that Lead Agencies also submit a NOC for Negative Declarations and NOPs. The Notice of Completion Form contained in the appendices to this Handbook, satisfies this requirement.

Notice of Availability

Public notice of the availability of a Draft EIR or a Negative Declaration must be provided by the Lead Agency to enable public agencies and individuals to review and comment on the document.

Minimum Contents of Public Notice of Availability

1) Description of proposed project;

2) Location of proposed project;

3) Specific period during which comments on proposed project will be accepted;

4) Date, time, and place of any public meetings on proposed project;

5) Address where copies of Draft EIR or Negative Declaration are available for review; and

6) Environmental effects of the project, if any.

The notice must be provided to all organizations and individuals who previously requested notice. At least one of the following notification methods must be used:

1) Publication by the Lead Agency in a newspaper of general circulation in the area affected by the proposed project.

2) Posting of the notice by the Lead Agency on- and off-site in the area where the project is to be located.

3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

A Notice of Availability does not need to be filed with SCH. However, the Lead Agency may submit this notice together with its Draft EIR or Negative Declaration to provide additional information to state agencies.

Notice of Determination

A Notice of Determination (NOD) is a document filed by a public agency within 5 days after it approves or determines to carry out a project that is subject to the requirements of CEQA.

Filing the NOD starts a 30-day statute of limitations on court challenges to the project approval under CEQA. If a NOD is not filed, the statute of limitations is 180 days.

Filing requirements for state and local agencies differ as follows:

1) Local Lead Agency: If a local Lead Agency is acting on the project, it must file the NOD with the county clerk of the county or counties where the project will be located within 5 working days of approving the project. In addition, if the project requires discretionary

approval from any state agency, the Local Lead Agency also must file a copy of the NOD with SCH.

2) State Lead Agency: When a state agency is the Lead Agency, the NOD must be filed with SCH.

Minimum Contents of a Notice of Determination:

For a Negative Declaration:

1) Identification of the project, including its common name or title, if possible;

2) Location of the project;

3) Brief description of the project;

4) Date the agency approved the project;

5) The determination by the approving agency that the project in its approved form will not have a significant effect on the environment;

6) Statement that a Negative Declaration was prepared pursuant to the provisions of CEQA; and

7) Address where a copy of the environmental document and record of project approval can be examined.

For an Environmental Impact Report (EIR):

1) Identification of the project, including its common name or title, if possible;

2) Location of the project;

3) Brief description of the project;

4) Date the agency approved the project;

5) Determination by the approving agency whether the project in its approved form will have a significant effect on the environment;

6) Statement that an EIR was prepared pursuant to the provisions of CEQA;

7) Whether mitigation measures were made a condition of the approval of the project;

8) Whether a statement of overriding considerations was adopted for the project;

9) Whether findings were made pursuant to Section 15091 of the CEQA Guidelines; and

10) Address where a copy of the final EIR and record of project approval may be examined.

Additionally, the notice shall be mailed to any person who has filed a written request for such notice.

Notice of Exemption

A Notice of Exemption (NOE) is a brief notice that can (but is not required to) be filed after a public agency has decided to carry out or approve a project it has determined is exempt from CEQA.

If a NOE is filed, it should be filed with the county clerk or SCH after the project has been approved. When a public agency approves an applicant's project, either the agency or the applicant may file a Notice of Exemption.

There are different filing requirements for state agencies, local agencies, and project applicants, as follows:

State Lead Agency: If a state agency, board, or commission determines that a project is not subject to CEQA, it may file a NOE with SCH after the project has been approved.

Local Lead Agency: When a local agency files this notice, it must be fled with the county clerk of the county or counties where the project is to be located.

Applicant: When an applicant files a NOE, the notice must be fled in the same place as if it were filed by the Lead Agency. Additionally, the notice shall be accompanied by a certified document issued by the public Lead Agency stating that the agency has found the project to be exempt.

The notice must be mailed to any person who has filed a written request for such notice. This filing begins a 35-day statute of limitations on legal challenges to the Lead Agency's decision that the project is exempt from CEQA. If a NOE is not filed, a 180-day statute of limitations applies.

Minimum Contents of a Notice of Exemption:

1) brief description of the project;

2) a finding that the project is exempt, including a citation that references the CEQA Guidelines or statutory section under which it is found to be exempt; and

3) brief statement of reasons to support the finding.

General CEQA Information

Definitions are provided for "Lead Agency", "Local Agency", "Public Agency", "Responsible Agency", "State Agency", and "Trustee Agency". Lead agencies are responsible for determining the appropriate type of CEQA document for its project based on interpretation of the CEQA Statutes and CEQA Guidelines. Definitions are also provided for the following types of documents; "Negative Declaration", "Environmental Impact Report", "Notice of Preparation", "Project EIR", "Program EIR", "Supplement to an EIR", "Subsequent EIR and Negative Declaration", "Addendum to an EIR or Negative Declaration", and "Final EIR".

Definitions of certain Comments are provided, including; "Authority to Comment", "Response to Notice of Preparation", "Responsible Agency Comments on Draft EIRs and Negative Declarations", "Consideration of Comments on a Negative Declaration",

"Evaluation of and Response to EIR Comments", "Contents of the Final EIR", "Failure to Comment", and "Retention and Availability of Comments".

The purposes of reviewing EIRs and Negative Declarations include:

a) Sharing expertise,

b) Disclosing agency analyses,

c) Checking for accuracy,

d) Detecting omissions,

e) Discovering public concerns, and

f) Soliciting counter proposals.

State Clearinghouse Forms

Standard forms are used by SCH, and although the forms provided in this section have been carefully developed to transmit the information required under CEQA, the statute does not require agencies to use these particular forms. Agencies are free to devise their own forms. However, agencies choosing to create their own forms must be sure to include all the information required in the CEQA Guidelines. SCH strongly encourages Lead Agencies to use the following forms:

1) Form A: Notice of Completion. Section 15085 requires agencies to file a Notice of Completion (NOC) form with OPR as soon as the Draft EIR is complete.

2) Form B: Notice of Preparation. Section 15082 discusses the required contents of a Notice of Preparation (NOP).

3) Form C: Notice of Determination. Section 15075 outlines the content requirements for filing a Notice of Determination (NOD). The NOD form in the Handbook can be used to file with SCH and/or the county clerk.

4) Form D: Notice of Exemption. Section 15062 discusses the content requirements for filing a Notice of Exemption (NOE). The NOE form in this Handbook can be used to file with SCH and/or the county clerk.

5) Form E: Shortened Review. Public Resources Code Section 21091 allows for shortened review periods under certain circumstances. A form for requesting shortened review has been provided in this

Handbook to ensure that the requesting agency provides all the information necessary for SCH to make a determination.

Explanation of the Notice of Completion Form

This form is required to be submitted with 15 copies of every draft Environmental Impact Report and Negative Declaration that is reviewed through the State Clearinghouse. It is used by the Clearinghouse to transmit all environmental documents.

Appendices

Appendix A provides which projects require State Clearinghouse review. Appendix B provides a flowchart in the process of a Lead Agency's decision to prepare an EIR. Appendix C provides the CEQA process flowchart. Appendix D provides the time periods for review of environmental documents. Appendix E provides an explanation of the State Clearinghouse Number. Appendix F provides the reviewing state agencies address list.

PART III. STATEMENT OF THE CLAIM

The Statutes, Public Resources Code Sections, Education Code Section, Government Code sections and California Code of Regulations sections referenced in

this test claim result in school districts incurring costs mandated by the state, as defined in Government Code section 17514[9], by creating new state-mandated duties related to the uniquely governmental function of providing services to the public and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[10]

The new duties mandated by the state upon school districts and county offices of education require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and

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[9] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

[10] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155, 172; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

consultants, equipment and capital assets, staff and student training and travel to implement the activities set forth in the declarations of William C. McGuire and Thomas J. Donner, attached hereto and incorporated herein by reference.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[1] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note, that to the extent school districts

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[1] Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

may have previously performed functions similar to those mandate by the referenced code sections, such efforts did not establish a preexisting duty that would relieve the State of its constitutional requirement to later reimburse school districts when these activities became mandated.[2]

SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

No funds are appropriated by the state for reimbursement of these costs mandated by the state and there is no other provision of law for recovery of costs from any other source.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of William C. McGuire, Associate Superintendent
Clovis Unified School District

Exhibit 2: Declaration of Thomas J. Donner, Executive Vice President
Business and Administration
Santa Monica Community College District

Exhibit 3: Copies of Statutes Cited

Chapter 1121, Statutes of 2002

Chapter 1052, Statutes of 2002

Chapter 1016, Statutes of 2002

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[2] Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Chapter 867, Statutes of 2001

Chapter 738, Statutes of 2000

Chapter 415, Statutes of 1997

Chapter 799, Statutes of 1996

Chapter 547, Statutes of 1996

Chapter 444, Statutes of 1996

Chapter 277, Statutes of 1996

Chapter 801, Statutes of 1995

Chapter 1294, Statutes of 1994

Chapter 1230, Statutes of 1994

Chapter 300, Statutes of 1994

Chapter 1131, Statutes of 1993

Chapter 1130, Statutes of 1993

Chapter 375, Statutes of 1993

Chapter 1212, Statutes of 1991

Chapter 1183, Statutes of 1991

Chapter 905, Statutes of 1991

Chapter 659, Statutes of 1989

Chapter 626, Statutes of 1989

Chapter 1452, Statutes of 1987

Chapter 85, Statutes of 1985

Chapter 1514, Statutes of 1984

Chapter 571, Statutes of 1984

Chapter 967, Statutes of 1983

Chapter 1200, Statutes of 1977

Chapter 1312, Statutes of 1976

Chapter 222, Statutes of 1975

Chapter 1154, Statutes of 1972

Chapter 1433, Statutes of 1970

Exhibit 4: Copies of Public Resources Code Sections Cited

Section 21002.1

Section 21003

Section 21003.1

Section 21080.09

Section 21080.1

Section 21080.3

Section 21080.4

Section 21081

Section 21081.6

Section 21082

Section 21082.1

Section 21082.2

Section 21083

Section 21083.2

Section 21091

Section 21092

Section 21092.1

Section 21092.2

Section 21092.3

Section 21092.4

Section 21092.5

Section 21092.6

Section 21094

Section 21100

Section 21102

Section 21150

Section 21151

Section 21151.2

Section 21151.8

Section 21152

Section 21153

Section 21154

Section 21157

Section 21157.1

		Section 21157.5
		Section 21158
		Section 21161
		Section 21165
		Section 21166
		Section 21167
		Section 21167.6
		Section 21167.6.5
		Section 21167.8
		Section 21168.9
	Exhibit 5:	Copy of Education Code Section Cited
		Section 17025
	Exhibit 6:	Copies of Government Code Sections Cited
		Section 66031
		Section 66034
	Exhibit 7:	Copies of Title 5 Regulations Cited
		Section 14011
		Section 57121
	Exhibit 8:	Copies of Title 14 Regulations Cited
		Section 15002
		Section 15004

Section 15020

Section 15021

Section 15022

Section 15025

Section 15041

Section 15042

Section 15043

Section 15050

Section 15053

Section 15060

Section 15061

Section 15062

Section 15063

Section 15064

Section 15064.5

Section 15064.7

Section 15065

Section 15070

Section 15071

Section 15072

Section 15073

Section 15073.5

Section 15074

Section 15074.1

Section 15075

Section 15081.5

Section 15082

Section 15084

Section 15085

Section 15086

Section 15087

Section 15088

Section 15088.5

Section 15089

Section 15090

Section 15091

Section 15092

Section 15093

Section 15094

Section 15095

Section 15100

Section 15104

Section 15122

Section 15123

Section 15124

Section 15125

Section 15126

Section 15126.2

Section 15126.4

Section 15126.6

Section 15128

Section 15129

Section 15130

Section 15132

Section 15140

Section 15142

Section 15143

Section 15145

Section 15147

Section 15148

Section 15149

Section 15150

Section 15152

Section 15153

Section 15162

Section 15164

Section 15165

Section 15167

Section 15168

Section 15176

Section 15177

Section 15178

Section 15179

Section 15184

Section 15185

Section 15186

Section 15201

Section 15203

Section 15205

Section 15206

Section 15208

Section 15223

Section 15225

Section 15367

Exhibit 9: Copies of California State Clearinghouse Handbook

PART V. CERTIFICATION

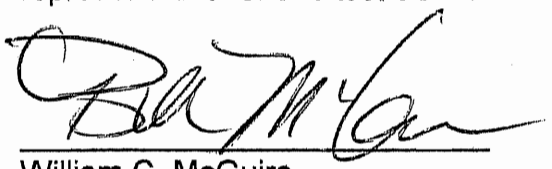
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2003, at Clovis, California by:

William C. McGuire
Associate Superintendent
Clovis Unified School District
Voice: (559) 327-9110
Fax: (559) 327-9129

PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unifed School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William C. McGuire
Associate Superintendent
Clovis Unified School District

9/22/2003
Date

Exhibit 1
Declaration of William C. McGuire

DECLARATION OF WILLIAM C. McGUIRE

Clovis Unified School District

Test Claim of Clovis Unified School District

COSM No. _____

Copies of Statutes Cited

Chapter 1121, Statutes of 2002
Chapter 1052, Statutes of 2002
Chapter 1016, Statutes of 2002
Chapter 867, Statutes of 2001
Chapter 738, Statutes of 2000
Chapter 415, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 547, Statutes of 1996
Chapter 444, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 801, Statutes of 1995
Chapter 1294, Statutes of 1994
Chapter 1230, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1131, Statutes of 1993
Chapter 1130, Statutes of 1993
Chapter 375, Statutes of 1993
Chapter 1212, Statutes of 1991
Chapter 1183, Statutes of 1991
Chapter 905, Statutes of 1991
Chapter 659, Statutes of 1989
Chapter 626, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 85, Statutes of 1985
Chapter 1514, Statutes of 1984
Chapter 571, Statutes of 1984
Chapter 967, Statutes of 1983
Chapter 1200, Statutes of 1977
Chapter 1312, Statutes of 1976
Chapter 222, Statutes of 1975
Chapter 1154, Statutes of 1972
Chapter 1433, Statutes of 1970

Public Resources Code Sections

21002.1	21092	21153
21003	21092.1	21154
21003.1	21092.2	21157
21080.09	21092.3	21157.1
21080.1	21092.4	21157.5
21080.3	21092.5	21158
21080.4	21092.6	21161
21081	21094	21165
21081.6	21100	21166
21082	21102	21167
21082.1	21150	21167.6
21082.2	21151	21167.6.5
21083	21151.2	21167.8
21083.2	21151.8	21168.9
21091	21152	

Education Code Section 17025

Government Code Sections 66031 and 66034

California Code of Regulations, Title 5
Sections14011 and 57121

California Code of Regulations, Title 14

15002	15073	15122	15153
15004	15073.5	15123	15162
15020	15074	15124	15164
15021	15074.1	15125	15165
15022	15075	15126	15167
15025	15081.5	15126.2	15168
15041	15082	15126.4	15176
15042	15084	15126.6	15177
15043	15085	15128	15178
15050	15086	15129	15179
15053	15087	15130	15184
15060	15088	15132	15185

	15061	15088.5	15140	15186
Executive Orders	15062	15089	15142	15201
California State Clearinghouse	15063	15090	15143	15203
Handbook - 2000	15064	15091	15145	15205
	15064.5	15092	15147	15206
	15064.7	15093	15148	15208
	15065	15094	15149	15223
	15070	15095	15150	15225
	15071	15100	15152	15367
	15072	15104		

California Environmental Quality Act (CEQA)

I, William C. McGuire, Associate Superintendent , Clovis Unified School District, make the following declaration and statement.

In my capacity as Associate Superintendent, I am responsible for the district's compliance with the California Environmental Quality Act. I am familiar with the provisions and requirements of the Statutes, Education Code Sections, Government Code Sections, Public Resources Code Sections, the Title 5 and Title 14 Code of Regulations Sections and the California State Clearinghouse Handbook enumerated above.

These statutes, code sections, regulations and executive orders, so far as applicable to K-12 school districts, require the Clovis Unified School District to:

All Programs: Pursuant to the Public Resources Code Sections, Education Code Sections, Government Code Sections, California Code of Regulations and Executive Orders cited, developing, adopting and implementing policies and procedures, and periodically revising those polices and procedures, to comply with the requirements of

the California Environmental Quality Act, and related statutes and regulations.

Education Code

1) Pursuant to Education Code Section 17025, subdivision (a), submitting plans and obtaining the written approval of Department of General Services when requesting authorization for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district.

2) Pursuant to Education Code Section 17025, subdivision (b), certifying the compliance of a project with Division 13 (commencing with Section 21000) of the Public Resources Code when requesting authorization for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district.

3) Pursuant to Education Code Section 17025, subdivision (b), and notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, complying with all the requirements of a "lead agency" with regard to any project funded for that district.

Government Code

4) Pursuant to Government Code Section 66031 Government Code Section 66031, subdivision (a)(1), mediating the acts or decisions of a district, county office or community college district made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources

Code).

5) Pursuant to Government Code Section 66031, subdivision (d), notifying the court if a mutually acceptable person has been chosen to serve as a mediator.

6) Pursuant to Government Code Section 66034, appearing and participating in settlement conferences ordered by the court.

Part A - Public Resources Code

A1) Pursuant to Public Resources Code Section 21002.1, subdivision (b), mitigating or avoiding the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

A2) Pursuant to Public Resources Code Section 21002.1, subdivision (d), being responsible for considering the effects, both individual and collective, of all activities involved in a project.

A3) Pursuant to Public Resources Code Section 21002.1, subdivision (e), reducing the time and cost required to prepare an environmental impact report, and focusing on potentially significant effects on the environment of a proposed project and focusing the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant.

A4) Pursuant to Public Resources Code Section 21003, subdivision (a), integrating the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those

procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

A5) Pursuant to Public Resources Code Section 21003, subdivision (b), preparing and writing documents in an organized manner that will be meaningful and useful to decision makers and to the public.

A6) Pursuant to Public Resources Code Section 21003, subdivision (c), omitting unnecessary descriptions of projects and emphasizing feasible mitigation measures and feasible alternatives to projects when preparing environmental impact reports.

A7) Pursuant to Public Resources Code Section 21003, subdivision (d), developing information in individual environmental impact reports so as to be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

A8) Pursuant to Public Resources Code Section 21003, subdivision (e), incorporating information developed in environmental impact reports and negative declarations into a data base which may be used to make subsequent or supplemental environmental determinations.

A9) Pursuant to Public Resources Code Section 21003, subdivision (f), being responsible for carrying out the environmental review process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those

resources may be better applied toward the mitigation of actual significant effects on the environment.

A10) Pursuant to Public Resources Code Section 21003.1, subdivision (b), making information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce those effects available as soon as possible to interested persons and organizations.

A11) Pursuant to Public Resources Code Section 21080.09, subdivision (b), (for community college districts only) preparing an environmental impact report when selecting a location for a particular campus and approving a long range development plan which considers the environmental effects relating to changes in enrollment levels for each campus.

A12) Pursuant to Public Resources Code Section 21080.09, subdivision (c), (for community college districts only) when appropriate, addressing the approval of a project on a particular campus of public higher education, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

A13) Pursuant to Public Resources Code Section 21080.1, subdivision (a), determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division.

A14) Pursuant to Public Resources Code Section 21080.3, subdivision (a), prior to

determining whether a negative declaration or environmental impact report is required for a project, consulting with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California.

A15) Pursuant to Public Resources Code Section 21080.4, subdivision (a), upon determination that an environmental impact report is required for a project, immediately sending notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California.

A16) Pursuant to Public Resources Code Section 21080.4, subdivision (b), meeting with any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, when requested, for the purpose of determining the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require.

A17) Pursuant to Public Resources Code Section 21081, before approving or carrying out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out, assuring that both of the following occur:

(a) The district or county office makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

A18) Pursuant to Public Resources Code Section 21081.6, subdivision (a), adopting a reporting or monitoring program for the changes made to the project or conditions of project approval in order to mitigate or avoid significant effects on the environment and specifying the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is

based.

A19) Pursuant to Public Resources Code Section 21081.6, subdivision (b), providing that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.

A20) Pursuant to Public Resources Code Section 21082, adopting by resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division.

A21) Pursuant to Public Resources Code Section 21082.1, subdivision (a), preparing any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration directly, or under contract to a third party.

A22) Pursuant to Public Resources Code Section 21082.1, subdivision (c), doing all of the following:

(1) Independently reviewing and analyzing any report or declaration required by this division.

(2) Circulating draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, finding that the report or declaration reflects the independent judgment of the lead agency.

(4) Submitting a sufficient number of copies of the draft environmental

impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or area wide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

A23) Pursuant to Public Resources Code Section 21082.2, subdivision (a), determining whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

A24) Pursuant to Public Resources Code Section 21082.2, subdivision (d), preparing an environmental impact report if there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment.

A25) Pursuant to Public Resources Code Section 21083, implementing the guidelines developed by the Office of Planning and Research, specifically implementing the criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment" and the procedures for determining the lead agency pursuant to the provisions of Section 21165.

A26) Pursuant to Public Resources Code Section 21083.2, subdivision (a), determining whether the project may have a significant effect on archaeological resources and, if so, addressing the issue of those resources in the environmental impact report.

A27) Pursuant to Public Resources Code Section 21083.2, subdivision (b), if it can be demonstrated that a project will cause damage to a unique archaeological resource, requiring reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state.

A28) Pursuant to Public Resources Code Section 21083.2, subdivision (c), to the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, requiring mitigation measures as provided in this subdivision.

A29) Pursuant to Public Resources Code Section 21083.2, subdivision (i) making provisions for archaeological sites accidentally discovered during construction, including an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, providing contingency funding and a time

allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures that may be required under the provisions set forth in this section

A30) Pursuant to Public Resources Code Section 21091, subdivision (a), providing a public review period for a draft environmental impact report of not less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and providing a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

A31) Pursuant to Public Resources Code Section 21091, subdivision (b), providing a public review period for a proposed negative declaration or proposed mitigated negative declaration of not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and providing a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

A32) Pursuant to Public Resources Code Section 21091, subdivision (c), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is

applicable, providing a public review period at least as long as the period of review by the State Clearinghouse.

A33) Pursuant to Public Resources Code Section 21091, subdivision (d)(1), considering any comments received on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

A34) Pursuant to Public Resources Code Section 21091, subdivision (d)(2)(A), evaluating any comments on environmental issues that are received from persons who have reviewed the draft and preparing a written response to those comments.

A35) Pursuant to Public Resources Code Section 21091, subdivision (e)(3), when necessary, requesting a shortened review period in writing by the decision making body to the Office of Planning and Research.

A36) Pursuant to Public Resources Code Section 21092, subdivision (a), providing notice of preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.

A37) Pursuant to Public Resources Code Section 21092, subdivision (b)(1), specifying in the notice the period during which comments will be received on the draft environmental report or negative declaration, and including the date, time, and

place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review. Conducting public meetings or hearings on the proposed project.

A38) Pursuant to Public Resources Code Section 21092, subdivision (b)(3), giving the notice required by this section to the last known name and address of all organizations and individuals who have previously requested notice and be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

A39) Pursuant to Public Resources Code Section 21092.1, when significant new

information is added to an environmental impact report after notice has been given pursuant to Section 21092, and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, giving notice again pursuant to Section 21092, and consulting again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

A40) Pursuant to Public Resources Code Section 21092.2, mailing the notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency.

A41) Pursuant to Public Resources Code Section 21092.3, posting the notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report in the office of the county clerk of each county in which the project will be located. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days.

A42) Pursuant to Public Resources Code Section 21092.4, subdivision (a), for a project of statewide, regional, or area wide significance, consulting with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project for the purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the

jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. Notifying a transportation planning agency or public agency which provides information to the lead agency of, and providing copies of, environmental documents pertaining to the project.

A43) Pursuant to Public Resources Code Section 21092.5, subdivision (a), at least 10 days prior to certifying an environmental impact report, providing a written proposed response to comments made by that agency which conform with the requirements of this division.

A44) Pursuant to Public Resources Code Section 21092.5, subdivision (b), notifying any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared.

A45) Pursuant to Public Resources Code Section 21092.6, subdivision (a), consulting the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list.

A46) Pursuant to Public Resources Code Section 21094, subdivision (a), where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, for a later project that meets the requirements of this section, examining significant effects of the later project upon the environment by using a tiered environmental impact report.

A47) Pursuant to Public Resources Code Section 21094, subdivision (c), for purposes of compliance with this section, preparing an initial study to assist in making the determinations required by this section, which analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

A48) Pursuant to Public Resources Code Section 21094, subdivision (e), when tiering is used pursuant to this section, referring to the prior environmental impact report and stating where a copy of the prior environmental impact report may be examined.

A49) Pursuant to Public Resources Code Section 21100, subdivision (a), preparing , or causing to be prepared by contract, and certifying the completion of, an environmental impact report on any project proposed to be carried out or approved that may have a significant effect on the environment.

A50) Pursuant to Public Resources Code Section 21100, subdivision (b), including in any environmental impact report a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be

irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

A51) Pursuant to Public Resources Code Section 21100, subdivision (c), including in each environmental impact report a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

A52) Pursuant to Public Resources Code Section 21102, accompanying each request for funds for any project, other than a project involving only feasibility or planning studies for possible future actions, with an environmental impact report.

A53) Pursuant to Public Resources Code Section 21102, including environmental factors in feasibility and planning studies exempted by this section from the preparation of an environmental impact report.

A54) Pursuant to Public Resources Code Section 21150, including a detailed statement setting forth the matters specified in Section 21100 when requesting allocation of any funds, other than funds solely for projects involving only feasibility or planning studies for possible future actions, for any project which

may have a significant effect on the environment.

A55) Pursuant to Public Resources Code Section 21151, subdivision (a), preparing, or causing to be prepared by contract, and certifying the completion of, an environmental impact report on any project intended to be carried out or approved which may have a significant effect on the environment.

A56) Pursuant to Public Resources Code Section 21151, subdivision (c), if a nonelected decision making body certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, responding to any appeal of that certification, approval, or determination in any hearing or proceeding before the elected decision making body.

A57) Pursuant to Public Resources Code Section 21151.2, before acquiring title to property for a new school site or for an addition to a present school site, giving notice in writing to the planning commission having jurisdiction of the proposed acquisition.

A58) Pursuant to Public Resources Code Section 21151.8, subdivision (a), before approving an environmental impact report or negative declaration for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district, making sure that all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be

purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or above ground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) Notifying in writing and consulting with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no such facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification to identify facilities pursuant to paragraph (2) has provided the requested information and provide a written

response to the lead agency within 30 days of receiving the notification.

A59) Pursuant to Public Resources Code Section 21152, subdivision (a), whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public. Making the notice of the approval or the determination available to the public.

A60) Pursuant to Public Resources Code Section 21152, subdivision (b), whenever a determination is made that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and a local agency approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, filing a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination

attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172.

A61) Pursuant to Public Resources Code Section 21152, subdivision (c), making all notices filed pursuant to this section available for public inspection, and posted within 24 hours of receipt in the office of the county clerk and retaining the notice for not less than nine months.

A62) Pursuant to Public Resources Code Section 21153, subdivision (a), prior to completing an environmental impact report, consulting with, and obtaining comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement with the local lead agency and the city or county, and consulting with any person who has special expertise with respect to any environmental impact involved.

A63) Pursuant to Public Resources Code Section 21153, subdivision (b), in the case of a project described in subdivision (a) of Section 21065, providing for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report.

A64) Pursuant to Public Resources Code Section 21154, whenever any state agency, board, or commission issues an order which requires a district or county office to

carry out a project which may have a significant effect on the environment, limiting any environmental impact report prepared to consideration of those factors and alternatives which will not conflict with such order.

A65) Pursuant to Public Resources Code Section 21157, subdivision (a), preparing a master environmental impact report when required or appropriate.

A66) Pursuant to Public Resources Code Section 21157, subdivision (a)(2), preparing a master environmental impact report when planning a project that consists of smaller individual projects which will be carried out in phases.

A67) Pursuant to Public Resources Code Section 21157, subdivision (b), when preparing a master environmental impact report, including in the document all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report.

A68) Pursuant to Public Resources Code Section 21157.1, when preparing and certifying a master environmental impact report, allowing for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the

environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, making a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. Prior to approving or carrying out the proposed subsequent project, providing notice of this fact pursuant to Section 21092 and incorporating all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where findings cannot be made as required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

A69) Pursuant to Public Resources Code Section 21157.5, subdivision (a), preparing a proposed mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to

revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

A70) Pursuant to Public Resources Code Section 21157.5, subdivision (b), if there is substantial evidence in light of the whole record that a proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

A71) Pursuant to Public Resources Code Section 21158, subdivision (a), incorporating by reference in a focused environmental impact report the master environmental impact report and analyzing only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

A72) Pursuant to Public Resources Code Section 21158, subdivision (c), analyzing, in a focused environmental impact report on any subsequent project, any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives

identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

A73) Pursuant to Public Resources Code Section 21161, upon completion of an environmental impact report, causing a notice of completion of that report to be filed with the Office of Planning and Research which shall briefly identify the project and shall indicate that an environmental impact report has been prepared.

A74) Pursuant to Public Resources Code Section 21165, when a project is to be carried out or approved by two or more public agencies, making the determination of whether the project may have a significant effect on the environment and preparing, or causing to be prepared by contract, the environmental impact report for the project, if such a report is required by this division.

A75) Pursuant to Public Resources Code Section 21166, when an environmental impact report has been prepared for a project pursuant to this division, preparing a subsequent or supplemental environmental impact report when one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the

environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

A76) Pursuant to Public Resources Code Section 21167, responding to legal actions or proceedings to attack, review, set aside, void, or annul acts or decisions on the grounds of noncompliance with this division.

A77) Pursuant to Public Resources Code Section 21167.6, subdivision (b)(1), preparing and certifying the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, lodging a copy of the record of proceedings with the court and serving on the parties notice that the record of proceedings has been certified and lodged with the court. Subdivision (e) provides that the record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the

respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decision making body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decision making body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decision making body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative

declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decision making body whose decision was appealed to a superior administrative decision making body prior to the filing of litigation.

A78) Pursuant to Public Resources Code Section 21167.6.5, subdivision (b), providing a petitioner or plaintiff, not later than 10 business days following service of the petition or complaint, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

A79) Pursuant to Public Resources Code Section 21167.8, subdivision (a), filing with the court a notice setting forth the time and place at which all parties shall meet

and attempt to settle the litigation.

A80) Pursuant to Public Resources Code Section 21167.8, subdivision (b), meeting and conferring with the other parties regarding anticipated issues to be raised in the litigation and attempting in good faith to settle the litigation and the dispute which forms the basis of the litigation at the time and place specified in the notice filed with the court.

A81) Pursuant to Public Resources Code Section 21167.8, subdivision (d), participating in further settlement conferences when the court, in its discretion or at the request of any party, schedules a further settlement conference before a judge of the superior court.

A82) Pursuant to Public Resources Code Section 21167.8, subdivision (f), not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, filing and serving on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

A83) Pursuant to Public Resources Code Section 21168.9, complying with orders that a court may make as a result of a trial, hearing or remand from an appellate court, including, in subdivision (a)(3), a mandate that a public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

Part B - Title 5, California Code of Regulations

B1) Pursuant to Title 5, California Code of Regulations, Section 14011, subdivision (h), preparing an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000 with particular attention to Section 21151.8). Pursuant to subdivision (k), following the recommendations of the State Superintendent of Public Instruction report based upon the Department of Transportation, Division of Aeronautics, findings, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Section 17215. Pursuant to subdivision (l), following the standards for school site selection in Section 14010 of this article. Pursuant to subdivision (m), conducting a public hearing, as required in Education Code Section 17211, to evaluate the property using the standards described in Section 14010. Pursuant to subdivision (n), submitting the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education. Pursuant to subdivision (o), certifying there are no available alternative school district-owned sites for the project deemed usable for school purposes by the California Department of Education or certify that the school district intends to sell an available alternative school district-owned site and use the proceeds from the sale for the purchase of the new school site.

B2) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision

(b), (for community college districts) including, in proposals for initial construction of facilities for a new campus, a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

B3) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (c), (for community college districts) submitting an Initial Study, pursuant to section 15080, Title 14, California Administrative Code, to the Chancellor's office concurrent with other required information.

B4) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (d), (for community college districts) submitting copies of the:

(a) Finding of Categorical Exemption (section 15023, Title 14, California Administrative Code);

(b) Negative Declaration (section 15083, Title 14, California Administrative Code); or

(c) Notice of Completion (section 15085(c), Title 14, California Administrative Code), whichever is appropriate.

B5) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (e), (for community college districts) submitting a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, to the Chancellor's office concurrently with plans submitted for approval in accordance with section

81837 (approval by board of governors) of the Education Code.

PART C - TITLE 14, CALIFORNIA CODE OF REGULATIONS

Article 1. General

C1) Pursuant to Title 14, California Code of Regulations, Section 15002, subdivision (e), complying with all CEQA procedures when carrying out an activity subject to its provisions, including:

(a) Preparing an EIR when the district finds substantial evidence that the project may have a significant effort on the environment.

(b) Preparing a "Negative Declaration" instead of an EIR when the district finds that there is no substantial evidence that a project may have a significant environmental effect.

(c) Soliciting and responding to comments from the public and from other agencies concerned with the project.

C2) Pursuant to Title 14, California Code of Regulations, Section 15002, subdivision (k) taking at least the following three steps in deciding which document to prepare for a project subject to CEQA:

(a) Examining the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may then prepare a notice of exemption.

(b) If the project is not exempt, taking the second step and conducting an initial study to determine whether the project may have a significant effect

on the environment.

(c) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR.

C3) Pursuant to Title 14, California Code of Regulations, Section 15004, subdivision (b), preparing an EIR or Negative Declaration as early as feasible in the planning process. Pursuant to subdivision (b)(1), incorporating environmental considerations into project conceptualization, design and planning prior to acquisition of a site for a public project. Subdivision (c) requires that the environmental document preparation and review be coordinated in a timely fashion with existing planning, review, and project approval processes being used by the district.

Article 2. General Responsibilities.

C4) Pursuant to Title 14, California Code of Regulations, Section 15020, complying with CEQA and these Guidelines.

C5) Pursuant to Title 14, California Code of Regulations, Section 15021, subdivision (a), avoiding or minimizing environmental damage where feasible. In regulating public or private activities, giving major consideration to preventing environmental damage.

C6) Pursuant to Title 14, California Code of Regulations, Section 15021, subdivision (d), balancing a variety of public objectives, including economic, environmental, and social factors.

C7) Pursuant to Title 14, California Code of Regulations, Section 15022 adopting objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should at least contain provisions for:

(a) Identifying the activities that are exempt from CEQA.

(b) Conducting initial studies.

(c) Preparing negative declarations.

(d) Preparing draft and final EIRs.

(e) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(f) Assuring adequate opportunity and time for public review and comment on the Draft EIR of Negative Declaration.

(g) Evaluating and responding to comments received on environmental documents.

(h) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(i) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

(j) Filing documents required or authorized by CEQA and these Guidelines.

(k) Providing adequate comments on environmental documents which are

submitted to the public agency for review.

(l) Assigning responsibility for specific functions to particular units of the public agency.

(m) Providing time periods for performing functions under CEQA.

C8) Pursuant to Title 14, California Code of Regulations, Section 15022, subdivision (c), revising implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments.

C9) Pursuant to Title 14, California Code of Regulations, Section 15025, subdivision (b), performing the following functions, without delegation:

(a) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(b) The making of findings as required by Sections 15091 and 15093.

Article 3. Authorities Granted to Public Agencies by CEQA

C10) Pursuant to Title 14, California Code of Regulations, Section 15041, having authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

C11) Pursuant to Title 14, California Code of Regulations, Section 15042, avoiding one or more significant effects on the environment that would occur if the project were approved as proposed.

C12) Pursuant to Title 14, California Code of Regulations, Section 15043, approving a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

1) There is no feasible way to lessen or avoid the significant effect; and

2) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.

Article 4. Lead Agency

C13) Pursuant to Title 14, California Code of Regulations, Section 15050, subdivision (a), being responsible for preparing an EIR or negative declaration for the project.

C14) Pursuant to Title 14, California Code of Regulations, Section 15053, subdivision (a), if there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

C15) Pursuant to Title 14, California Code of Regulations, Section 15060, subdivision (c), first determining whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(a) The activity does not involve the exercise of discretionary powers by a public agency;

(b) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(c) The activity is not a project as defined in Section 15378.

C16) Pursuant to Title 14, California Code of Regulations, Section 15060, subdivision (d), if the lead agency can determine that an EIR will clearly be required for a project, skipping further initial review of the project and begin working directly on the EIR process.

C17) Pursuant to Title 14, California Code of Regulations, Section 15061, subdivision (a), once a lead agency has determined that an activity is a project subject to CEQA, determining whether the project is exempt from CEQA.

C18) Pursuant to Title 14, California Code of Regulations, Section 15061, subdivision (c), including in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt.

C19) Pursuant to Title 14, California Code of Regulations, Section 15062, subdivision (a), upon deciding that a project is exempt from CEQA and the public agency approves or determines to carry out the project, filing a notice of exemption. The notice shall be filed, if at all, after approval of the project, and shall include a brief description of the project, a finding that the project is exempt from CEQA, and a brief statement of reasons to support the finding.

C20) Pursuant to Title 14, California Code of Regulations, Section 15062, subdivision (c), when a public agency approves an applicant's project, either the agency or

the applicant may file a notice of exemption. When a local agency files this notice, filing the notice of exemption with the county clerk of each county in which the project will be located, making available copies of the notices for public inspection, retaining them for not less than 9 months.

C21) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (a), following preliminary review, conducting an initial study to determine if the project may have a significant effect on the environment.

C22) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (b):

(a) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, doing one of the following:

(i) preparing an EIR, or

(ii) using a previously prepared EIR, or

(iii) determining which of a project's effects were adequately examined by an earlier EIR or negative declaration.

(b) Preparing a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

C23) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision

(d), containing in an initial study:

(a) A description of the project including the location of the project;

(b) An identification of the environmental setting:

(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries.

(d) A discussion of ways to mitigate the significant effects identified, if any;

(e) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(f) The name of the person or persons who prepared or participated in the initial study.

C24) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (g), as soon as a lead agency has determined that an initial study will be required for the project, consulting informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared.

C25) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (a)(1), if there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, preparing a draft EIR.

C26) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (a)(2), when a final EIR identifies one or more significant effects, making a finding under Section 15091 for each significant effect and, when necessary, making a statement of overriding consideration under Section 15093 for the project.

C27) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (c), considering the views held by members of the public in all areas affected in determining whether an effect will be adverse or beneficial.

C28) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (d), considering direct physical changes in the environment which may be caused by the project and reasonablely foreseeable indirect physical changes in the environment which may be caused by the project.

C29) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (g), if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, treating the effect as significant and preparing an EIR.

C30) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (i):

(a) Considering whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable when assessing whether a cumulative effect requires an EIR .

(b) Determining in an initial study that a project's contribution to a significant

cumulative impact will be rendered less than cumulatively considerable and thus is not significant.

(c) Determining that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.

(d) Determining that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project.

C31) Pursuant to Title 14, California Code of Regulations, Section 15064.5, subdivision (b), identifying potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource and ensuring that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

C32) Pursuant to Title 14, California Code of Regulations, Section 15064.5, subdivision (f), making provisions for historical or unique archaeological resources accidentally discovered during construction.

C33) Pursuant to Title 14, California Code of Regulations, Section 15064.7, subdivision

(b), adopting by resolution, rule, or regulation; developing through a public review process; and being supported by substantial evidence, thresholds of significance for general use as part of the environmental review process.

C34) Pursuant to Title 14, California Code of Regulations, Section 15065, finding that a project may have a significant effect on the environment and thereby preparing an EIR for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited by cumulatively considerable effects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Article 6. Negative Declaration Process

C35) Pursuant to Title 14, California Code of Regulations, Section 15070, preparing, or

arranging preparation of, a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but

(I) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(ii) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

C36) Pursuant to Title 14, California Code of Regulations, Section 15071, including in a negative declaration circulated for public review:

(a) A brief description of the project, including a commonly used name for the project, if any:

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the

environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

C37) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (a), providing a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adopting the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

C38) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (b), mailing a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and giving notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(a) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project.

(b) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(c) Direct mailing to the owners and occupants of property contiguous to the project.

C39) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (e), for a project of statewide, regional, or area wide significance, providing notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code.

C40) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (f), including in a notice of intent to adopt a negative declaration or mitigated negative declaration the following:

(a) A brief description of the proposed project and its location.

(b) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration.

(c) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(d) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions

developed under Section 15050(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review.

(e) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(f) Other information specifically required by statute or regulation for a particular project or type of project.

C41) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (a), providing a public review period pursuant to Section 15105 of not less than 20 days.

C42) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (c), attaching a copy of the proposed negative declaration or mitigated negative declaration and the initial study to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

C43) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision

(d), sending copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies, where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or area wide environmental significance.

C44) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (e), notifying, in writing, any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared.

C45) Pursuant to Title 14, California Code of Regulations, Section 15073.5, subdivision (a), re-circulating a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to it adoption.

C46) Pursuant to Title 14, California Code of Regulations, Section 15073.5, subdivision (d), preparing a draft EIR and certifying a final EIR prior to approving the project, if during the negative declaration process there is substantial evidence in light of the whole record that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided.

C47) Pursuant to Title 14, California Code of Regulations, Section 15074, subdivision (b), considering, prior to approving a project, the proposed negative declaration

together with any comments received during the public review process.

C48) Pursuant to Title 14, California Code of Regulations, Section15074, subdivision (c), specifying the location and custodian of the documents or other materials which constitute the record of proceedings upon which its decision is based, when adopting a mitigated negative declaration or mitigated negative declaration.

C49) Pursuant to Title 14, California Code of Regulations, Section15074, subdivision (d), adopting a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects, when adopting a mitigated negative declaration.

C50) Pursuant to Title 14, California Code of Regulations, Section 15074.1, subdivision (b), prior to deleting and substituting for a mitigation measure, doing both of the following:

(a) Holding a public hearing on the matter.

(b) Adopting a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

C51) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (a), filing a notice of determination, after deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved; and for projects with phases, filing a notice of determination after deciding to carry out or approve each phase.

C52) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (b), include in the notice of determination:

(a) An identification of the project including its common name where possible, and its location.

(b) A brief description of the project.

(c) The date on which the agency approved the project.

(d) The determination of the agency that the project will not have a significant effect on the environment.

(e) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(f) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

C53) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (c), filing a notice of determination with OPR.

Article 7. EIR process

C54) Pursuant to Title 14, California Code of Regulations, Section 15081.5, subdivision (a), preparing, or having prepared, an EIR for specified projects.

C55) Pursuant to Title 14, California Code of Regulations, Section 15081.5, subdivision (b), preparing or having prepared an EIR for the selection of a California Community College campus location and approval of a long range development plan for that campus.

C56) Pursuant to Title 14, California Code of Regulations, Section 15082, subdivision (a), immediately after deciding that an environmental impact report is required for a project, sending to each responsible agency a notice of preparation stating that an environmental impact report will be prepared, and to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

C57) Pursuant to Title 14, California Code of Regulations, Section 15082, subdivision (d), when one or more state agencies will be a responsible agency or a trustee agency, sending a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research.

C58) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (a), preparing the draft EIR directly or under contract to a third party.

C59) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (d), choosing one of the following arrangements, or a combination of them, in preparing a draft EIR;

(a) Preparing the draft EIR directly with its own staff.

(b) Contracting with another entity, public or private, to prepare the draft EIR.

(c) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(d) Executing a third party contract or memorandum of understanding with the

applicant to govern the preparation of a draft EIR by an independent contractor.

(e) Using a previously prepared EIR.

C60) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (e), subjecting the draft to their own review and analysis, before using a draft prepared by another person.

C61) Pursuant to Title 14, California Code of Regulations, Section 15085, subdivision (a), filing a notice of completion with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission, as soon as the draft EIR is completed.

C62) Pursuant to Title 14, California Code of Regulations, Section 15085, subdivision (b), including in the notice of completion:

(a) A brief description of the project,

(b) The proposed location of the project,

(c) An address where copies of the draft EIR are available, and

(d) The period during which comments will be received on the draft EIR.

C63) Pursuant to Title 14, California Code of Regulations, Section 15086, subdivision (a), consulting with and requesting comments on the draft EIR from:

(a) Responsible agencies,

(b) Trustee agencies with resources affected by the project, and

(c) Any other state, federal , and local agencies which have jurisdiction by law

with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(d) Any city or county which borders on a city or county within which the project is located, and

(e) For a project of statewide, regional, or area wide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project.

C64) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (a), providing public notice of the availability of a draft EIR at the same time as sending a notice of completion to OPR, as provided under Section 15105. Mailing the notice to the last known name and address of all organizations and individuals who have previously requested such notice in writing by at least one of the following procedures:

(a) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(b) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(c) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

C65) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (c), disclosing the following in the notice:

(a) A brief description of the proposed project and its location.

(b) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(c) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(d) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(e) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(f) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

C66) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (g), furnishing copies of draft EIRs to public library systems serving in the area involve in order to make copies of EIRs available to the public.

C67) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (a), evaluating comments on environmental issues received from persons who reviewed the draft EIR, preparing a written response, and responding to comments received during the noticed comment period.

C68) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (b), describing in the written response the disposition of significant environmental issues raised. In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted.

C69) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (c), where the response to comments makes important changes in the information contained in the text of the draft EIR, either:

(1) Revising the text in the body of the EIR, or

(2) Including marginal notes showing that the information is revised in the response to comments.

C70) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (a), recirculating an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.

C71) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (e), supporting a decision not to recirculate an EIR by substantial evidence in the administrative record.

C72) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (f), evaluating and responding to comments as provided in Section 15088.

C73) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (g),summarizing the revisions made to the previously circulated draft EIR, when recirculating a revised EIR, either in whole or in part, in the revised EIR or by an attachment to the revised EIR.

C74) Pursuant to Title 14, California Code of Regulations, Section 15089, subdivision

(a), preparing a final EIR before approving the project.

C75) Pursuant to Title 14, California Code of Regulations, Section 15090, subdivision (a), certifying, prior to approving a project, that:

(a) The final EIR has been completed in compliance with CEQA;

(b) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and

(c) The final EIR reflects the lead agency's independent judgment and analysis.

C76) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (a), not approving or carrying out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless making one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

C77) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (b), supporting the findings required by subsection (a) by substantial evidence in the record.

C78) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (d), when making the findings required in subsection (a)(1), adopting a program for reporting on or monitoring the changes which it has either required in the

project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

C79) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (e), specifying the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

C80) Pursuant to Title 14, California Code of Regulations, Section 15092, subdivision (b), not deciding to approve or carry out a project for which an EIR was prepared unless either:

(a) The project as approved will not have a significant effect on the environment, or

(b) The agency has:

(i) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(ii) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

C81) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision

(a), balancing, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

C82) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (b), when approving a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, stating in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

C83) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (c), if an agency makes a statement of overriding considerations, including the statement in the record of the project approval and mentioning it in the notice of determination.

C84) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (c), if a local agency is the lead agency, filing the notice of determination with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, filing the notice of determination with OPR.

C85) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (d), retaining a notice of determination for not less than 9 months.

C86) Pursuant to Title 14, California Code of Regulations, Section 15094, subdivision (a), filing a notice of determination within 5 working days after approval of the project by the lead agency, which includes:

(a) An identification of the project including its common name where possible and its location.

(b) A brief description of the project.

(c) The date when the agency approved the project.

(d) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(e) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(f) Whether mitigation measures were made a condition of the approval of the project.

(g) Whether findings were made pursuant to Section 15091.

(h) Whether a statement of overriding considerations was adopted for the project.

(I) The address where a copy of the final EIR and the record of project approval may be examined.

C87) Pursuant to Title 14, California Code of Regulations, Section 15095:

(a) Filing a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Including the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retaining one or more copies of the final EIR as public records for a reasonable period of time.

Article 8. Time Limits

C88) Pursuant to Title 14, California Code of Regulations, Section 15100, subdivision (a), adopting time limits to govern their implementation of CEQA consistent with this article.

C89) Pursuant to Title 14, California Code of Regulations, Section 15104, convening a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting.

Article 9. Contents of Environmental Impact Reports

C90) Pursuant to Title 14, California Code of Regulations, Section 15122, including in an EIR at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

C91) Pursuant to Title 14, California Code of Regulations, Section 15123, subdivision (a), including in an EIR a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

C92) Pursuant to Title 14, California Code of Regulations, Section 15123, subdivision (b), identifying in the summary:

(a) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(b) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(c) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

C93) Pursuant to Title 14, California Code of Regulations, Section 15124, containing the following information in the description of the project:

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and aid the decision makers in preparing findings or a statement of

overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR, and including, to the extent that the information is know:

(i) A list of the agencies that are expected to use the EIR in their decision-making,

(ii) A list of permits and other approvals required to implement the project, and

(iii) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

C94) Pursuant to Title 14, California Code of Regulations, Section 15125, subdivision (a), including in an EIR, a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is

C98) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (a), describing in an EIR, a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, evaluating the comparative merits of the alternatives, and selecting a range of project alternatives for examination and publicly disclosing its reasoning for selecting those alternatives.

C99) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (b), focusing the discussion of alternatives on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

C100) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (d), including in the EIR, sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.

C101) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (e), evaluating the specific alternative of "no project" along with its impact.

C102) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (f), setting forth in the EIR, the rule of reason, which requires only those alternatives necessary to permit a reasoned choice. Of those alternatives,

examining in detail in the EIR, only the ones that have been determined could feasibly attain most of the basic objectives of the project.

C103) Pursuant to Title 14, California Code of Regulations, Section 15128, containing, in an EIR, a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR.

C104) Pursuant to Title 14, California Code of Regulations, Section 15129, identifying, in an EIR, all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

C105) Pursuant to Title 14, California Code of Regulations, Section 15130, subdivision (a), discussing in an EIR, cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

C106) Pursuant to Title 14, California Code of Regulations, Section 15130, subdivision (b), reflecting in the discussion of cumulative impacts, the severity of the impacts

and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone.

C107) Pursuant to Title 14, California Code of Regulations, Section 15132, including in the final EIR:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the lead agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

Article 10. Considerations in Preparing EIRs and Negative Declarations

C108) Pursuant to Title 14, California Code of Regulations, Section 15140, writing EIRs in plain language and using appropriate graphics so that decision makers and the public can rapidly understand the documents.

C109) Pursuant to Title 14, California Code of Regulations, Section 15142, preparing an EIR using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors.

C110) Pursuant to Title 14, California Code of Regulations, Section 15143, focusing the the EIR on the significant effects on the environment and discussing them with emphasis in proportion to their severity and probability of occurrence.

C111) Pursuant to Title 14, California Code of Regulations, Section 15145, if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, noting its conclusion and terminating discussion of the impact.

C112) Pursuant to Title 14, California Code of Regulations, Section 15147, including, in an EIR, summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public.

C113) Pursuant to Title 14, California Code of Regulations, Section 15148, citing in the EIR, all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

C114) Pursuant to Title 14, California Code of Regulations, Section 15149, subdivision (b), establishing requirements or conditions on project design, construction, or operation in order to protect or enhance the environment.

C115) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (b), stating in the EIR or negative declaration where the incorporated documents will be available for inspection.

C116) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (c), where an EIR or negative declaration uses incorporation by reference, briefly summarizing the incorporated part of the referenced document where possible or briefly describing if the data or information cannot be summarized.

C117) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (d), where an agency incorporates information from an EIR that has previously been reviewed through the state review system, including in the summary or designation described in subdivision (c), the state identification number of the incorporated document.

C118) Pursuant to Title 14, California Code of Regulations, Section 15152, subdivision (f) providing a later EIR when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, and providing a negative declaration when the provisions of Section 15070 are met.

C119) Pursuant to Title 14, California Code of Regulations, Section 15153, subdivision (b), when a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, using the following procedures:

(a) Reviewing the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(I) The general environmental setting of the project,

(ii) The significant environmental impacts of the project, and

(iii) Alternatives and mitigation measures related to each significant effect.

(b) If the lead agency believes that the EIR would meet the requirements of Subsection (1), providing public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project, and including in the notice as a minimum:

(i) An identification of the project with a brief description;

(ii) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(iii) A listing of places where copies of the EIR may be examined; and

(iv) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(c) Preparing responses to comments received during the review period.

(d) Before approving the project:

(i) Considering the information in the EIR including comments received during the review period and responses to those comments,

(ii) Deciding either on its own or on a staff recommendation whether the EIR is adequate for the project at hand,

(iii) Making or requiring certification to be made as described in Section 15090, and

(iv) Making findings as provided in Sections 15091 and 15093 as necessary.

(e) After making a decision on the project, filing a notice of determination.

Article 11. Types of EIRs

C120) Pursuant to Title 14, California Code of Regulations, Section 15162, subdivision (a), determining, in order for a subsequent EIR to be prepared for that project, when an EIR has been certified or a negative declaration adopted for a project, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the

involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(i) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(ii) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(iv) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

C121) Pursuant to Title 14, California Code of Regulations, Section 15162, subdivision (b), preparing a subsequent EIR if required under subsection (a), if changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, otherwise, determining whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

C122) Pursuant to Title 14, California Code of Regulations, Section 15164, subdivision (a), preparing an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

C123) Pursuant to Title 14, California Code of Regulations, Section 15164, subdivision (e), including in an addendum to an EIR, their findings on the project, or elsewhere in the record, a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162, and supporting the explanation by substantial evidence.

C124) Pursuant to Title 14, California Code of Regulations, Section 15165, preparing a single program EIR for the ultimate project as described in Section 15168, where

individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect.

C125) Pursuant to Title 14, California Code of Regulations, Section 15167, subdivision (a), subdivision (b), when a staged EIR has been prepared, preparing a supplement to the EIR when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

C126) Pursuant to Title 14, California Code of Regulations, Section 15168, subdivision (c), examining subsequent activities in the program in the light of the program EIR to determine whether an additional environmental document must be prepared.

C127) Pursuant to Title 14, California Code of Regulations, Section 15168, subdivision (e), when a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, including in the notice for the activity a statement that:

(a) This activity is within the scope of the program approved earlier, and

(b) The program EIR adequately describes the activity for the purposes of CEQA.

Article 11.5. Master Environmental Impact Report

C128) Pursuant to Title 14, California Code of Regulations, Section 15176, if using a Master EIR, including all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(i) The specific type of project anticipated to be undertaken.

(ii) The maximum and minimum intensity of any anticipated subsequent project.

(iii) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(iv) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

C129) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision

(c), determining whether a subsequent project is within the scope of the Master EIR based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

C130) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision (d), prior to approval of the proposed subsequent project, incorporating all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

C131) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision (e), when approving a project pursuant to this section, filing a notice in the manner required by Section 15075.

C132) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (a), when a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, preparing a mitigated negative declaration or a focused EIR if, after

preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Determining whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate based upon a review of the proposed subsequent project in light of the Master EIR.

C133) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (b), preparing a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(a) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(b) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

C134) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (c), preparing a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared, according to the following:

(a) Incorporating, in the focused EIR, by reference the Master EIR and

analyzing only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR.

(b) A focused EIR need not examine those effects upon, finding, prior to public release of the focused EIR, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(i) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(ii) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(iii) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(c) Including the above findings in the focused EIR prior to public release pursuant to Section 15087.

(d) Analyzing any significant environmental effects when:

(i) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(ii) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

C135) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (d), filing a notice of determination pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and filing a notice of determination pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

C136) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (e), upon determining that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process, reviewing according to Article 7 (commencing with Section 15080) of these guidelines, and

tiering the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

C137) Pursuant to Title 14, California Code of Regulations, Section 15179, the certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

Article 12. Special Situations

C138) Pursuant to Title 14, California Code of Regulations, Section 15184, whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, limiting the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. Complying with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment.

C139) Pursuant to Title 14, California Code of Regulations, Section 15185, subdivision (b), the decision making body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

C140) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (a), consulting with other agencies in the case that CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous

materials, wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR.

C141) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (b), when a project located within one-fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, performing the following:

(a) Consulting with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(b) Notifying the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR.

C142) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (c), when the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(a) Notifying in writing and consulting with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. Including in the notice a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification.

(b) Making, on the basis of substantial evidence, one of the following written findings:

(i) Consultation identified none of the facilities specified in paragraph (2).

(ii) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

Article 13. Review and Evaluations of EIRs and Negative Declarations

C143) Pursuant to Title 14, California Code of Regulations, Section 15201, Including provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

C144) Pursuant to Title 14, California Code of Regulations, Section 15203, providing adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

C145) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (a), submitting draft EIRs and negative declarations to be reviewed by state

agencies to the State Clearinghouse, and including, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

C146) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (b), submitting the following environmental documents to the State Clearinghouse for review by state agencies:

(a) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(b) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(c) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(d) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

C147) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (c), including with any environmental documents submitted to the State Clearinghouse, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

C148) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (d), when an EIR or negative declaration is submitted to the State Clearinghouse for review, setting the review period at least as long as the period provided in the state review system operated by the State Clearinghouse, and in exceptional circumstances, requesting shorter review periods.

C149) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (e), submitting no less ten copies of an EIR or negative declaration unless the State Clearinghouse approves a lower number in advance.

C150) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (f), submitting documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

C151) Pursuant to Title 14, California Code of Regulations, Section 15206, subdivision (a), submitting a draft EIR or negative declaration to the State Clearinghouse and to the appropriate metropolitan area council of governments for review and comment, and when such documents are submitted to the State Clearinghouse, including, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

C152) Pursuant to Title 14, California Code of Regulations, Section 15206, subdivision (b), determining that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(a) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(b) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located.

(c) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(d) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact specific areas of critical environmental.

(e) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(f) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(g) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

C153) Pursuant to Title 14, California Code of Regulations, Section 15208, keeping on file comments which may be received on a draft EIR or negative declaration.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

C154) Pursuant to Title 14, California Code of Regulations, Section 15223, when planning to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, consulting as soon as possible with the federal agency.

C155) Pursuant to Title 14, California Code of Regulations, Section 15225, subdivision (a), prior to using the federal document in this situation, giving notice, in the same manner as a notice of the public availability of a draft EIR under Section 15087, that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA.

Article 20. Definitions

C156) Pursuant to Title 14, California Code of Regulations, Section 15367, deciding whether an EIR or negative declaration will be required for the project and causing the document to be prepared.

Part D - California State Clearinghouse Handbook

D1) Pursuant to the California State Clearinghouse Handbook, pages 5-6, when submitting a draft negative declaration to SCH,

(1) Sending at least 15 copies which contain:

(a) Description and title of the project;

(b) Location of the project, preferably shown on a map;

(c) Name of the project proponent;

(d) A proposed finding that the project will not have a significant effect on the environment;

(e) An attached copy of the Initial Study documenting reasons to support the finding; and

(f) Mitigation measures, if any, included in the project to avoid potentially significant effects.

(2) Referencing any previously assigned number, if applicable.

D2) Pursuant to California State Clearinghouse Handbook, page 6, within five working days of approving a project for which a Negative Declaration has been adopted,

filing a Notice of Determination (NOD) with the county clerk of the county or counties where the project is located and with SCH.

D3) Pursuant to California State Clearinghouse Handbook, page 7, circulating a Notice of Preparation (NOP) to all Responsible and Trustee Agencies advising them of the district's intention to prepare a Draft EIR. This includes sending copies directly to all Responsible and Trustee Agencies. When there is a Responsible or Trustee state agency involved in a project, sending a copy of the NOP to the SCH, attaching the district's distribution list. The minimum content requirements for a NOP are:

(1) Description of the project;

(2) Location of the project, indicated either on an attached map (preferably a topographical map), or by a street address in an urbanized area;

(3) Salient environmental issues; and

(4) Probable environmental effects of the project.

D4) Pursuant to California State Clearinghouse Handbook, page 7, using a project number for all subsequent environmental documents for a project.

D5) Pursuant to California State Clearinghouse Handbook, page 7, submitting at least fifteen copies of any Draft EIR to SCH together with one copy of the NOC form.

D6) Pursuant to California State Clearinghouse Handbook, page 8, after receiving all public comments, including those of state agencies, preparing written responses and including them in the Final EIR. Certifying the Final EIR before approving the project.

D7) Pursuant to California State Clearinghouse Handbook, page 9, within five working days of approving a project for which an EIR was prepared, filing a Notice of Determination (NOD) with the county clerk of the county or counties where the project will be located and with SCH.

D8) Pursuant to California State Clearinghouse Handbook, page 10, when requesting a shortened review process for draft Negative Declarations and EIRs, contacting the SCH prior to submitting a request for shortened review explaining why the shortened review is needed and identify prior approval from Responsible state agencies. The request shall include the following criteria:

(1) The district is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

(2) The district is under severe time constraints with regard to financing or exercising options which cannot be met without shortening the review period.

(3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

(4) The health and safety of the community would be at risk unless the project is approved expeditiously.

(5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

(6) The district shall provide evidence that there has been prior consultation with Responsible and Trustee state agencies.

(7) Before submitting a shortened review request, the district must have obtained verbal or written approval for a shortened review period from Responsible and Trustee state agencies. The request letter from the district must identify which state agencies have been contacted and the agencies' responses to the request.

D9) Pursuant to California State Clearinghouse Handbook, page 10, when requesting a shortened review process, following the following procedures:

(1) The request must be made to SCH in writing by the decision-making body of the district, or an authorized representative of the district, and shall be made on district letterhead. When submitted by a representative, a copy of the resolution or ordinance from the district board delegating authority should be attached.

(2) The request must explain the "exceptional circumstances" for making the request.

(3) The request must be accompanied by 15 copies of the environmental document.

(4) SCH approval of a shortened review period must be granted before issuing the public notice of availability.

(5) The public review period must be at least as long as the review period set by SCH.

(6) The review period for a Negative Declaration shall not be shorter than 20 days. The district must specify the requested length of the shortened review period.

(7) The review period for a Draft EIR shall not be shorter than 30 days. The district must specify the requested length of the shortened review period.

(8) The district may use the Shortened Review Application form contained in the Handbook.

D10) Pursuant to California State Clearinghouse Handbook, page 15, filing Notices of Completion at SCH.

D11) Pursuant to California State Clearinghouse Handbook, page 15, providing public notice of the availability of a Draft EIR or a Negative Declaration which contains at least the following:

(1) Description of proposed project;

(2) Location of proposed project;

(3) Specific period during which comments on proposed project will be accepted;

(4) Date, time, and place of any public meetings on proposed project;

(5) Address where copies of Draft EIR or Negative Declaration are available for review; and

(6) Environmental effects of the project, if any.

D12) Pursuant to California State Clearinghouse Handbook, page 15, providing the notice of availability to all organizations and individuals who previously requested notice using at least one of the following notification methods:

(1) Publication in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of the notice on- and off-site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

D13) Pursuant to California State Clearinghouse Handbook, page 15, filing a Notice of Determination (NOD) within 5 days after a district approves or determines to carry out a project with the county clerk of the county or counties where the project will be located and SCH.

D14) Pursuant to California State Clearinghouse Handbook, pages 15-16, including in a Notice of Determination:

For a Negative Declaration:

(1) Identification of the project, including its common name or title, if possible;

(2) Location of the project;

(3) Brief description of the project;

(4) Date the agency approved the project;

(5) The determination by the approving agency that the project in its approved form will not have a significant effect on the environment;

(6) Statement that a Negative Declaration was prepared pursuant to the provisions of CEQA; and

(7) Address where a copy of the environmental document and record of project approval can be examined.

For an Environmental Impact Report (EIR):

(1) Identification of the project, including its common name or title, if possible;

(2) Location of the project;

(3) Brief description of the project;

(4) Date the agency approved the project;

(5) Determination by the approving agency whether the project in its approved form will have a significant effect on the environment;

(6) Statement that an EIR was prepared pursuant to the provisions of CEQA;

(7) Whether mitigation measures were made a condition of the approval of the project;

(8) Whether a statement of overriding considerations was adopted for the project;

(9) Whether findings were made pursuant to Section 15091 of the CEQA Guidelines; and

(10) Address where a copy of the final EIR and record of project approval may be examined.

Additionally, the notice shall be mailed to any person who has filed a written request for such notice.

D15) Pursuant to California State Clearinghouse Handbook, page 16, filing a Notice of Exemption (NOE) with the county clerk of the county or counties where the project is to be located. In addition the notice must be mailed to any person who has filed a written request for such notice.

D16) Pursuant to California State Clearinghouse Handbook, pages 16, including in any Notice of Exemption (NOE):

(1) A brief description of the project;

(2) A finding that the project is exempt, including a citation that references the CEQA Guidelines or statutory section under which it is found to be exempt; and

(3) A brief statement of reasons to support the finding.

It is estimated that the Clovis Unified School District incurred more than $1,000 in staffing and other costs for the period from July 1, 2002 through June 30, 2003 to implement the new duties applicable to K-12 school districts mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon

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information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 22 day of September, 2003, at Clovis, California.

William C. McGuire
Associate Superintendent
Clovis Unified School District

Exhibit 2
Declaration of Thomas J. Donner

DECLARATION OF THOMAS J. DONNER

Santa Monica Community College District

Test Claim of Clovis Unified School District

COSM No. _____

Copies of Statutes Cited

Chapter 1121, Statutes of 2002
Chapter 1052, Statutes of 2002
Chapter 1016, Statutes of 2002
Chapter 867, Statutes of 2001
Chapter 738, Statutes of 2000
Chapter 415, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 547, Statutes of 1996
Chapter 444, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 801, Statutes of 1995
Chapter 1294, Statutes of 1994
Chapter 1230, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1131, Statutes of 1993
Chapter 1130, Statutes of 1993
Chapter 375, Statutes of 1993
Chapter 1212, Statutes of 1991
Chapter 1183, Statutes of 1991
Chapter 905, Statutes of 1991
Chapter 659, Statutes of 1989
Chapter 626, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 85, Statutes of 1985
Chapter 1514, Statutes of 1984
Chapter 571, Statutes of 1984
Chapter 967, Statutes of 1983
Chapter 1200, Statutes of 1977
Chapter 1312, Statutes of 1976
Chapter 222, Statutes of 1975
Chapter 1154, Statutes of 1972
Chapter 1433, Statutes of 1970

Public Resources Code Sections

21002.1	21092	21153
21003	21092.1	21154
21003.1	21092.2	21157
21080.09	21092.3	21157.1
21080.1	21092.4	21157.5
21080.3	21092.5	21158
21080.4	21092.6	21161
21081	21094	21165
21081.6	21100	21166
21082	21102	21167
21082.1	21150	21167.6
21082.2	21151	21167.6.5
21083	21151.2	21167.8
21083.2	21151.8	21168.9
21091	21152	

Education Code Section 17025

Government Code Sections 66031 and 66034

California Code of Regulations, Title 5
Sections14011 and 57121

California Code of Regulations, Title 14

15002	15073	15122	15153
15004	15073.5	15123	15162
15020	15074	15124	15164
15021	15074.1	15125	15165
15022	15075	15126	15167
15025	15081.5	15126.2	15168
15041	15082	15126.4	15176
15042	15084	15126.6	15177
15043	15085	15128	15178
15050	15086	15129	15179
15053	15087	15130	15184
15060	15088	15132	15185

	15061	15088.5	15140	15186
Executive Orders	15062	15089	15142	15201
California State Clearinghouse	15063	15090	15143	15203
Handbook - 2000	15064	15091	15145	15205
	15064.5	15092	15147	15206
	15064.7	15093	15148	15208
	15065	15094	15149	15223
	15070	15095	15150	15225
	15071	15100	15152	15367
	15072	15104		

California Environmental Quality Act (CEQA)

I, Thomas J. Donner, Executive Vice President, Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President, Business and Administration, I am responsible for the district's compliance with the California Environmental Quality Act. I am familiar with the provisions and requirements of the Statutes, Education Code Section, Public Resources Code Sections, Government Code Sections, the Title 5 and Title 14 Code of Regulations Sections and the California State Clearinghouse Handbook enumerated above.

These statutes, code sections, regulations and executive orders, so far as applicable to community college districts, require the Santa Monica Community College District to:

All Programs: Pursuant to the Public Resources Code Sections, Education Code Sections, Government Code Sections, California Code of Regulations and Executive

Orders cited, developing, adopting and implementing policies and procedures, and periodically revising those polices and procedures, to comply with the requirements of the California Environmental Quality Act, and related statutes and regulations.

Education Code

1) Pursuant to Education Code Section 17025, subdivision (a), submitting plans and obtaining the written approval of Department of General Services when requesting authorization for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district.

2) Pursuant to Education Code Section 17025, subdivision (b), certifying the compliance of a project with Division 13 (commencing with Section 21000) of the Public Resources Code when requesting authorization for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district.

3) Pursuant to Education Code Section 17025, subdivision (b), and notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, complying with all the requirements of a "lead agency" with regard to any project funded for that district.

Government Code

4) Pursuant to Government Code Section 66031 Government Code Section 66031, subdivision (a)(1), mediating the acts or decisions of a district, county office or

community college district made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

5) Pursuant to Government Code Section 66031, subdivision (d), notifying the court if a mutually acceptable person has been chosen to serve as a mediator.

6) Pursuant to Government Code Section 66034, appearing and participating in settlement conferences ordered by the court.

Part A - Public Resources Code

A1) Pursuant to Public Resources Code Section 21002.1, subdivision (b), mitigating or avoiding the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

A2) Pursuant to Public Resources Code Section 21002.1, subdivision (d), being responsible for considering the effects, both individual and collective, of all activities involved in a project.

A3) Pursuant to Public Resources Code Section 21002.1, subdivision (e), reducing the time and cost required to prepare an environmental impact report, and focusing on potentially significant effects on the environment of a proposed project and focusing the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant.

A4) Pursuant to Public Resources Code Section 21003, subdivision (a), integrating

the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

A5) Pursuant to Public Resources Code Section 21003, subdivision (b), preparing and writing documents in an organized manner that will be meaningful and useful to decision makers and to the public.

A6) Pursuant to Public Resources Code Section 21003, subdivision (c), omitting unnecessary descriptions of projects and emphasizing feasible mitigation measures and feasible alternatives to projects when preparing environmental impact reports.

A7) Pursuant to Public Resources Code Section 21003, subdivision (d), developing information in individual environmental impact reports so as to be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

A8) Pursuant to Public Resources Code Section 21003, subdivision (e), incorporating information developed in environmental impact reports and negative declarations into a data base which may be used to make subsequent or supplemental environmental determinations.

A9) Pursuant to Public Resources Code Section 21003, subdivision (f), being responsible for carrying out the environmental review process in the most

efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

A10) Pursuant to Public Resources Code Section 21003.1, subdivision (b), making information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce those effects available as soon as possible to interested persons and organizations.

A11) Pursuant to Public Resources Code Section 21080.09, subdivision (b), (for community college districts only) preparing an environmental impact report when selecting a location for a particular campus and approving a long range development plan which considers the environmental effects relating to changes in enrollment levels for each campus.

A12) Pursuant to Public Resources Code Section 21080.09, subdivision (c), (for community college districts only) when appropriate, addressing the approval of a project on a particular campus of public higher education, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

A13) Pursuant to Public Resources Code Section 21080.1, subdivision (a), determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this

division.

A14) Pursuant to Public Resources Code Section 21080.3, subdivision (a), prior to determining whether a negative declaration or environmental impact report is required for a project, consulting with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California.

A15) Pursuant to Public Resources Code Section 21080.4, subdivision (a), upon determination that an environmental impact report is required for a project, immediately sending notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California.

A16) Pursuant to Public Resources Code Section 21080.4, subdivision (b), meeting with any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, when requested, for the purpose of determining the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require.

A17) Pursuant to Public Resources Code Section 21081, before approving or carrying out a project for which an environmental impact report has been certified which

identifies one or more significant effects on the environment that would occur if the project is approved or carried out, assuring that both of the following occur:

(a) The district or county office makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

A18) Pursuant to Public Resources Code Section 21081.6, subdivision (a), adopting a reporting or monitoring program for the changes made to the project or conditions of project approval in order to mitigate or avoid significant effects on the

environment and specifying the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

A19) Pursuant to Public Resources Code Section 21081.6, subdivision (b), providing that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures.

A20) Pursuant to Public Resources Code Section 21082, adopting by resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division.

A21) Pursuant to Public Resources Code Section 21082.1, subdivision (a), preparing any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration directly, or under contract to a third party.

A22) Pursuant to Public Resources Code Section 21082.1, subdivision (c), doing all of the following:

(1) Independently reviewing and analyzing any report or declaration required by this division.

(2) Circulating draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, finding that the report or declaration reflects the independent judgment of the lead

agency.

(4) Submitting a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or area wide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

A23) Pursuant to Public Resources Code Section 21082.2, subdivision (a), determining whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

A24) Pursuant to Public Resources Code Section 21082.2, subdivision (d), preparing an environmental impact report if there is substantial evidence, in light of the

whole record before the lead agency, that a project may have a significant effect on the environment.

A25) Pursuant to Public Resources Code Section 21083, implementing the guidelines developed by the Office of Planning and Research, specifically implementing the criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment" and the procedures for determining the lead agency pursuant to the provisions of Section 21165.

A26) Pursuant to Public Resources Code Section 21083.2, subdivision (a), determining whether the project may have a significant effect on archaeological resources and, if so, addressing the issue of those resources in the environmental impact report.

A27) Pursuant to Public Resources Code Section 21083.2, subdivision (b), if it can be demonstrated that a project will cause damage to a unique archaeological resource, requiring reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state.

A28) Pursuant to Public Resources Code Section 21083.2, subdivision (c), to the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, requiring mitigation measures as provided in this subdivision.

A29) Pursuant to Public Resources Code Section 21083.2, subdivision (i) making provisions for archaeological sites accidentally discovered during construction,

including an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, providing contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures that may be required under the provisions set forth in this section

A30) Pursuant to Public Resources Code Section 21091, subdivision (a), providing a public review period for a draft environmental impact report of not less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and providing a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

A31) Pursuant to Public Resources Code Section 21091, subdivision (b), providing a public review period for a proposed negative declaration or proposed mitigated negative declaration of not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and providing a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

A32) Pursuant to Public Resources Code Section 21091, subdivision (c), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review

and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, providing a public review period at least as long as the period of review by the State Clearinghouse.

A33) Pursuant to Public Resources Code Section 21091, subdivision (d)(1), considering any comments received on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

A34) Pursuant to Public Resources Code Section 21091, subdivision (d)(2)(A), evaluating any comments on environmental issues that are received from persons who have reviewed the draft and preparing a written response to those comments.

A35) Pursuant to Public Resources Code Section 21091, subdivision (e)(3), when necessary, requesting a shortened review period in writing by the decision making body to the Office of Planning and Research.

A36) Pursuant to Public Resources Code Section 21092, subdivision (a), providing notice of preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.

A37) Pursuant to Public Resources Code Section 21092, subdivision (b)(1), specifying

in the notice the period during which comments will be received on the draft environmental report or negative declaration, and including the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review. Conducting public meetings or hearings on the proposed project.

A38) Pursuant to Public Resources Code Section 21092, subdivision (b)(3), giving the notice required by this section to the last known name and address of all organizations and individuals who have previously requested notice and be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property

shown on the latest equalized assessment roll.

A39) Pursuant to Public Resources Code Section 21092.1, when significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092, and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, giving notice again pursuant to Section 21092, and consulting again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

A40) Pursuant to Public Resources Code Section 21092.2, mailing the notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency.

A41) Pursuant to Public Resources Code Section 21092.3, posting the notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report in the office of the county clerk of each county in which the project will be located. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days.

A42) Pursuant to Public Resources Code Section 21092.4, subdivision (a), for a project of statewide, regional, or area wide significance, consulting with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project for the

purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. Notifying a transportation planning agency or public agency which provides information to the lead agency of, and providing copies of, environmental documents pertaining to the project.

A43) Pursuant to Public Resources Code Section 21092.5, subdivision (a), at least 10 days prior to certifying an environmental impact report, providing a written proposed response to comments made by that agency which conform with the requirements of this division.

A44) Pursuant to Public Resources Code Section 21092.5, subdivision (b), notifying any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared.

A45) Pursuant to Public Resources Code Section 21092.6, subdivision (a), consulting the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list.

A46) Pursuant to Public Resources Code Section 21094, subdivision (a), where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, for a later project that meets the requirements of this

section, examining significant effects of the later project upon the environment by using a tiered environmental impact report.

A47) Pursuant to Public Resources Code Section 21094, subdivision (c), for purposes of compliance with this section, preparing an initial study to assist in making the determinations required by this section, which analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

A48) Pursuant to Public Resources Code Section 21094, subdivision (e), when tiering is used pursuant to this section, referring to the prior environmental impact report and stating where a copy of the prior environmental impact report may be examined.

A49) Pursuant to Public Resources Code Section 21100, subdivision (a), preparing , or causing to be prepared by contract, and certifying the completion of, an environmental impact report on any project proposed to be carried out or approved that may have a significant effect on the environment.

A50) Pursuant to Public Resources Code Section 21100, subdivision (b), including in any environmental impact report a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided

if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

A51) Pursuant to Public Resources Code Section 21100, subdivision (c), including in each environmental impact report a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

A52) Pursuant to Public Resources Code Section 21102, accompanying each request for funds for any project, other than a project involving only feasibility or planning studies for possible future actions, with an environmental impact report.

A53) Pursuant to Public Resources Code Section 21102, including environmental factors in feasibility and planning studies exempted by this section from the preparation of an environmental impact report.

A54) Pursuant to Public Resources Code Section 21150, including a detailed statement setting forth the matters specified in Section 21100 when requesting

allocation of any funds, other than funds solely for projects involving only feasibility or planning studies for possible future actions, for any project which may have a significant effect on the environment.

A55) Pursuant to Public Resources Code Section 21151, subdivision (a), preparing, or causing to be prepared by contract, and certifying the completion of, an environmental impact report on any project intended to be carried out or approved which may have a significant effect on the environment.

A56) Pursuant to Public Resources Code Section 21151, subdivision (c), if a nonelected decision making body certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, responding to any appeal of that certification, approval, or determination in any hearing or proceeding before the elected decision making body.

A57) Pursuant to Public Resources Code Section 21151.2, before acquiring title to property for a new school site or for an addition to a present school site, giving notice in writing to the planning commission having jurisdiction of the proposed acquisition.

A58) Pursuant to Public Resources Code Section 21151.8, subdivision (a), before approving an environmental impact report or negative declaration for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district, making sure that all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or above ground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) Notifying in writing and consulting with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or

acutely hazardous materials, substances, or waste. The notification shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no such facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality

management district receiving written notification to identify facilities pursuant to paragraph (2) has provided the requested information and provide a written response to the lead agency within 30 days of receiving the notification.

A59) Pursuant to Public Resources Code Section 21152, subdivision (a), whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public. Making the notice of the approval or the determination available to the public.

A60) Pursuant to Public Resources Code Section 21152, subdivision (b), whenever a determination is made that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and a local agency approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, filing a notice of the determination with the county clerk of each county in which the project will be

located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172.

A61) Pursuant to Public Resources Code Section 21152, subdivision (c), making all notices filed pursuant to this section available for public inspection, and posted within 24 hours of receipt in the office of the county clerk and retaining the notice for not less than nine months.

A62) Pursuant to Public Resources Code Section 21153, subdivision (a), prior to completing an environmental impact report, consulting with, and obtaining comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement with the local lead agency and the city or county, and consulting with any person who has special expertise with respect to any environmental impact involved.

A63) Pursuant to Public Resources Code Section 21153, subdivision (b), in the case of a project described in subdivision (a) of Section 21065, providing for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report.

A64) Pursuant to Public Resources Code Section 21154, whenever any state agency, board, or commission issues an order which requires a district or county office to carry out a project which may have a significant effect on the environment, limiting any environmental impact report prepared to consideration of those factors and alternatives which will not conflict with such order.

A65) Pursuant to Public Resources Code Section 21157, subdivision (a), preparing a master environmental impact report when required or appropriate.

A66) Pursuant to Public Resources Code Section 21157, subdivision (a)(2), preparing a master environmental impact report when planning a project that consists of smaller individual projects which will be carried out in phases.

A67) Pursuant to Public Resources Code Section 21157, subdivision (b), when preparing a master environmental impact report, including in the document all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report.

A68) Pursuant to Public Resources Code Section 21157.1, when preparing and certifying a master environmental impact report, allowing for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, making a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. Prior to approving or carrying out the proposed subsequent project, providing notice of this fact pursuant to Section 21092 and incorporating all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where findings cannot be made as required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

A69) Pursuant to Public Resources Code Section 21157.5, subdivision (a), preparing a proposed mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental

impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

A70) Pursuant to Public Resources Code Section 21157.5, subdivision (b), if there is substantial evidence in light of the whole record that a proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

A71) Pursuant to Public Resources Code Section 21158, subdivision (a), incorporating by reference in a focused environmental impact report the master environmental impact report and analyzing only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

A72) Pursuant to Public Resources Code Section 21158, subdivision (c), analyzing, in a focused environmental impact report on any subsequent project, any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was

described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

A73) Pursuant to Public Resources Code Section 21161, upon completion of an environmental impact report, causing a notice of completion of that report to be filed with the Office of Planning and Research which shall briefly identify the project and shall indicate that an environmental impact report has been prepared.

A74) Pursuant to Public Resources Code Section 21165, when a project is to be carried out or approved by two or more public agencies, making the determination of whether the project may have a significant effect on the environment and preparing, or causing to be prepared by contract, the environmental impact report for the project, if such a report is required by this division.

A75) Pursuant to Public Resources Code Section 21166, when an environmental impact report has been prepared for a project pursuant to this division, preparing a subsequent or supplemental environmental impact report when one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

A76) Pursuant to Public Resources Code Section 21167, responding to legal actions or proceedings to attack, review, set aside, void, or annul acts or decisions on the grounds of noncompliance with this division.

A77) Pursuant to Public Resources Code Section 21167.6, subdivision (b)(1), preparing and certifying the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, lodging a copy of the record of proceedings with the court and serving on the parties notice that the record of proceedings has been certified and lodged with the court. Subdivision (e) provides that the record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent

public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decision making body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decision making body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decision making body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decision making body whose decision was appealed to a superior administrative decision making body prior to the filing of litigation.

A78) Pursuant to Public Resources Code Section 21167.6.5, subdivision (b), providing a petitioner or plaintiff, not later than 10 business days following service of the petition or complaint, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

A79) Pursuant to Public Resources Code Section 21167.8, subdivision (a), filing with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation.

A80) Pursuant to Public Resources Code Section 21167.8, subdivision (b), meeting and conferring with the other parties regarding anticipated issues to be raised in the litigation and attempting in good faith to settle the litigation and the dispute which forms the basis of the litigation at the time and place specified in the notice filed with the court.

A81) Pursuant to Public Resources Code Section 21167.8, subdivision (d), participating in further settlement conferences when the court, in its discretion or at the request of any party, schedules a further settlement conference before a judge of the superior court.

A82) Pursuant to Public Resources Code Section 21167.8, subdivision (f), not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, filing and serving on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

A83) Pursuant to Public Resources Code Section 21168.9, complying with orders that a court may make as a result of a trial, hearing or remand from an appellate court, including, in subdivision (a)(3), a mandate that a public agency take specific action as may be necessary to bring the determination, finding, or

decision into compliance with this division.

Part B - Title 5, California Code of Regulations

B1) Pursuant to Title 5, California Code of Regulations, Section 14011, subdivision (h), preparing an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000 with particular attention to Section 21151.8). Pursuant to subdivision (k), following the recommendations of the State Superintendent of Public Instruction report based upon the Department of Transportation, Division of Aeronautics, findings, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Section 17215. Pursuant to subdivision (l), following the standards for school site selection in Section 14010 of this article. Pursuant to subdivision (m), conducting a public hearing, as required in Education Code Section 17211, to evaluate the property using the standards described in Section 14010. Pursuant to subdivision (n), submitting the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education. Pursuant to subdivision (o), certifying there are no available alternative school district-owned sites for the project deemed usable for school purposes by the California Department of Education or certify that the school district intends to sell an available alternative school district-owned site and use the proceeds from the

sale for the purchase of the new school site.

B2) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (b), (for community college districts) including, in proposals for initial construction of facilities for a new campus, a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

B3) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (c), (for community college districts) submitting an Initial Study, pursuant to section 15080, Title 14, California Administrative Code, to the Chancellor's office concurrent with other required information.

B4) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (d), (for community college districts) submitting copies of the:

(a) Finding of Categorical Exemption (section 15023, Title 14, California Administrative Code);

(b) Negative Declaration (section 15083, Title 14, California Administrative Code); or

(c) Notice of Completion (section 15085(c), Title 14, California Administrative Code), whichever is appropriate.

B5) Pursuant to Title 5, California Code of Regulations, Section 57121, subdivision (e), (for community college districts) submitting a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14,

California Administrative Code), whichever is appropriate, to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 (approval by board of governors) of the Education Code.

PART C - TITLE 14, CALIFORNIA CODE OF REGULATIONS

Article 1. General

C1) Pursuant to Title 14, California Code of Regulations, Section 15002, subdivision (e), complying with all CEQA procedures when carrying out an activity subject to its provisions, including:

(a) Preparing an EIR when the district finds substantial evidence that the project may have a significant effort on the environment.

(b) Preparing a "Negative Declaration" instead of an EIR when the district finds that there is no substantial evidence that a project may have a significant environmental effect.

(c) Soliciting and responding to comments from the public and from other agencies concerned with the project.

C2) Pursuant to Title 14, California Code of Regulations, Section 15002, subdivision (k) taking at least the following three steps in deciding which document to prepare for a project subject to CEQA:

(a) Examining the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may then prepare a notice of exemption.

(b) If the project is not exempt, taking the second step and conducting an initial study to determine whether the project may have a significant effect on the environment.

(c) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR.

C3) Pursuant to Title 14, California Code of Regulations, Section 15004, subdivision (b), preparing an EIR or Negative Declaration as early as feasible in the planning process. Pursuant to subdivision (b)(1), incorporating environmental considerations into project conceptualization, design and planning prior to acquisition of a site for a public project. Subdivision (c) requires that the environmental document preparation and review be coordinated in a timely fashion with existing planning, review, and project approval processes being used by the district.

Article 2. General Responsibilities.

C4) Pursuant to Title 14, California Code of Regulations, Section 15020, complying with CEQA and these Guidelines.

C5) Pursuant to Title 14, California Code of Regulations, Section 15021, subdivision (a), avoiding or minimizing environmental damage where feasible. In regulating public or private activities, giving major consideration to preventing environmental damage.

C6) Pursuant to Title 14, California Code of Regulations, Section 15021, subdivision

(d), balancing a variety of public objectives, including economic, environmental, and social factors.

C7) Pursuant to Title 14, California Code of Regulations, Section 15022 adopting objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should at least contain provisions for:

(a) Identifying the activities that are exempt from CEQA.

(b) Conducting initial studies.

(c) Preparing negative declarations.

(d) Preparing draft and final EIRs.

(e) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(f) Assuring adequate opportunity and time for public review and comment on the Draft EIR of Negative Declaration.

(g) Evaluating and responding to comments received on environmental documents.

(h) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(i) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

(j) Filing documents required or authorized by CEQA and these Guidelines.

(k) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(l) Assigning responsibility for specific functions to particular units of the public agency.

(m) Providing time periods for performing functions under CEQA.

C8) Pursuant to Title 14, California Code of Regulations, Section 15022, subdivision (c), revising implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments.

C9) Pursuant to Title 14, California Code of Regulations, Section 15025, subdivision (b), performing the following functions, without delegation:

(a) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(b) The making of findings as required by Sections 15091 and 15093.

Article 3. Authorities Granted to Public Agencies by CEQA

C10) Pursuant to Title 14, California Code of Regulations, Section 15041, having authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

C11) Pursuant to Title 14, California Code of Regulations, Section 15042, avoiding one

or more significant effects on the environment that would occur if the project were approved as proposed.

C12) Pursuant to Title 14, California Code of Regulations, Section 15043, approving a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

1) There is no feasible way to lessen or avoid the significant effect; and

2) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.

Article 4. Lead Agency

C13) Pursuant to Title 14, California Code of Regulations, Section 15050, subdivision (a), being responsible for preparing an EIR or negative declaration for the project.

C14) Pursuant to Title 14, California Code of Regulations, Section 15053, subdivision (a), if there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

C15) Pursuant to Title 14, California Code of Regulations, Section 15060, subdivision (c), first determining whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(a) The activity does not involve the exercise of discretionary powers by a public agency;

(b) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(c) The activity is not a project as defined in Section 15378.

C16) Pursuant to Title 14, California Code of Regulations, Section 15060, subdivision (d), if the lead agency can determine that an EIR will clearly be required for a project, skipping further initial review of the project and begin working directly on the EIR process.

C17) Pursuant to Title 14, California Code of Regulations, Section 15061, subdivision (a), once a lead agency has determined that an activity is a project subject to CEQA, determining whether the project is exempt from CEQA.

C18) Pursuant to Title 14, California Code of Regulations, Section 15061, subdivision (c), including in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt.

C19) Pursuant to Title 14, California Code of Regulations, Section 15062, subdivision (a), upon deciding that a project is exempt from CEQA and the public agency approves or determines to carry out the project, filing a notice of exemption. The notice shall be filed, if at all, after approval of the project, and shall include a brief description of the project, a finding that the project is exempt from CEQA, and a brief statement of reasons to support the finding.

C20) Pursuant to Title 14, California Code of Regulations, Section 15062, subdivision (c), when a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption. When a local agency files this notice, filing the notice of exemption with the county clerk of each county in which the project will be located, making available copies of the notices for public inspection, retaining them for not less than 9 months.

C21) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (a), following preliminary review, conducting an initial study to determine if the project may have a significant effect on the environment.

C22) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (b):

(a) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, doing one of the following:

(i) preparing an EIR, or

(ii) using a previously prepared EIR, or

(iii) determining which of a project's effects were adequately examined by an earlier EIR or negative declaration.

(b) Preparing a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the

environment.

C23) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (d), containing in an initial study:

(a) A description of the project including the location of the project;

(b) An identification of the environmental setting:

(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries.

(d) A discussion of ways to mitigate the significant effects identified, if any;

(e) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(f) The name of the person or persons who prepared or participated in the initial study.

C24) Pursuant to Title 14, California Code of Regulations, Section 15063, subdivision (g), as soon as a lead agency has determined that an initial study will be required for the project, consulting informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared.

C25) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (a)(1), if there is substantial evidence, in light of the whole record before a lead

agency, that a project may have a significant effect on the environment, preparing a draft EIR.

C26) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (a)(2), when a final EIR identifies one or more significant effects, making a finding under Section 15091 for each significant effect and, when necessary, making a statement of overriding consideration under Section 15093 for the project.

C27) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (c), considering the views held by members of the public in all areas affected in determining whether an effect will be adverse or beneficial.

C28) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (d), considering direct physical changes in the environment which may be caused by the project and reasonablely foreseeable indirect physical changes in the environment which may be caused by the project.

C29) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (g), if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, treating the effect as significant and preparing an EIR.

C30) Pursuant to Title 14, California Code of Regulations, Section 15064, subdivision (i):

(a) Considering whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable when assessing

whether a cumulative effect requires an EIR .

(b) Determining in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant.

(c) Determining that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located.

(d) Determining that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project.

C31) Pursuant to Title 14, California Code of Regulations, Section 15064.5, subdivision (b), identifying potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource and ensuring that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

C32) Pursuant to Title 14, California Code of Regulations, Section 15064.5, subdivision (f), making provisions for historical or unique archaeological resources

accidentally discovered during construction.

C33) Pursuant to Title 14, California Code of Regulations, Section 15064.7, subdivision (b), adopting by resolution, rule, or regulation; developing through a public review process; and being supported by substantial evidence, thresholds of significance for general use as part of the environmental review process.

C34) Pursuant to Title 14, California Code of Regulations, Section 15065, finding that a project may have a significant effect on the environment and thereby preparing an EIR for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited by cumulatively considerable effects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Article 6. Negative Declaration Process

C35) Pursuant to Title 14, California Code of Regulations, Section 15070, preparing, or arranging preparation of, a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but

(i) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(ii) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

C36) Pursuant to Title 14, California Code of Regulations, Section 15071, including in a negative declaration circulated for public review:

(a) A brief description of the project, including a commonly used name for the project, if any:

(b) The location of the project, preferably shown on a map, and the name of

the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

C37) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (a), providing a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adopting the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

C38) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (b), mailing a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and giving notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(a) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project.

(b) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(c) Direct mailing to the owners and occupants of property contiguous to the project.

C39) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (e), for a project of statewide, regional, or area wide significance, providing notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code.

C40) Pursuant to Title 14, California Code of Regulations, Section 15072, subdivision (f), including in a notice of intent to adopt a negative declaration or mitigated negative declaration the following:

(a) A brief description of the proposed project and its location.

(b) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration.

(c) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(d) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15050(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review.

(e) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(f) Other information specifically required by statute or regulation for a particular project or type of project.

C41) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (a), providing a public review period pursuant to Section 15105 of not less than 20 days.

C42) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (c), attaching a copy of the proposed negative declaration or mitigated negative declaration and the initial study to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law

over resources affected by the project.

C43) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (d), sending copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies, where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or area wide environmental significance.

C44) Pursuant to Title 14, California Code of Regulations, Section 15073, subdivision (e), notifying, in writing, any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared.

C45) Pursuant to Title 14, California Code of Regulations, Section 15073.5, subdivision (a), re-circulating a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to it adoption.

C46) Pursuant to Title 14, California Code of Regulations, Section 15073.5, subdivision (d), preparing a draft EIR and certifying a final EIR prior to approving the project, if during the negative declaration process there is substantial evidence in light of the whole record that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided.

C47) Pursuant to Title 14, California Code of Regulations, Section 15074, subdivision (b), considering, prior to approving a project, the proposed negative declaration together with any comments received during the public review process.

C48) Pursuant to Title 14, California Code of Regulations, Section15074, subdivision (c), specifying the location and custodian of the documents or other materials which constitute the record of proceedings upon which its decision is based, when adopting a mitigated negative declaration or mitigated negative declaration.

C49) Pursuant to Title 14, California Code of Regulations, Section15074, subdivision (d), adopting a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects, when adopting a mitigated negative declaration.

C50) Pursuant to Title 14, California Code of Regulations, Section 15074.1, subdivision (b), prior to deleting and substituting for a mitigation measure, doing both of the following:

(a) Holding a public hearing on the matter.

(b) Adopting a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

C51) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (a), filing a notice of determination, after deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been

approved; and for projects with phases, filing a notice of determination after deciding to carry out or approve each phase.

C52) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (b), include in the notice of determination:

(a) An identification of the project including its common name where possible, and its location.

(b) A brief description of the project.

(c) The date on which the agency approved the project.

(d) The determination of the agency that the project will not have a significant effect on the environment.

(e) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(f) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

C53) Pursuant to Title 14, California Code of Regulations, Section 15075, subdivision (c), filing a notice of determination with OPR.

Article 7. EIR process

C54) Pursuant to Title 14, California Code of Regulations, Section 15081.5, subdivision (a), preparing, or having prepared, an EIR for specified projects.

C55) Pursuant to Title 14, California Code of Regulations, Section 15081.5, subdivision (b), preparing or having prepared an EIR for the selection of a California

Community College campus location and approval of a long range development plan for that campus.

C56) Pursuant to Title 14, California Code of Regulations, Section 15082, subdivision (a), immediately after deciding that an environmental impact report is required for a project, sending to each responsible agency a notice of preparation stating that an environmental impact report will be prepared, and to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

C57) Pursuant to Title 14, California Code of Regulations, Section 15082, subdivision (d), when one or more state agencies will be a responsible agency or a trustee agency, sending a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research.

C58) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (a), preparing the draft EIR directly or under contract to a third party.

C59) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (d), choosing one of the following arrangements, or a combination of them, in preparing a draft EIR;

(a) Preparing the draft EIR directly with its own staff.

(b) Contracting with another entity, public or private, to prepare the draft EIR.

(c) Accepting a draft prepared by the applicant, a consultant retained by the

applicant, or any other person.

(d) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(e) Using a previously prepared EIR.

C60) Pursuant to Title 14, California Code of Regulations, Section 15084, subdivision (e), subjecting the draft to their own review and analysis, before using a draft prepared by another person.

C61) Pursuant to Title 14, California Code of Regulations, Section 15085, subdivision (a), filing a notice of completion with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission, as soon as the draft EIR is completed.

C62) Pursuant to Title 14, California Code of Regulations, Section 15085, subdivision (b), including in the notice of completion:

(a) A brief description of the project,

(b) The proposed location of the project,

(c) An address where copies of the draft EIR are available, and

(d) The period during which comments will be received on the draft EIR.

C63) Pursuant to Title 14, California Code of Regulations, Section 15086, subdivision (a), consulting with and requesting comments on the draft EIR from:

(a) Responsible agencies,

(b) Trustee agencies with resources affected by the project, and

(c) Any other state, federal , and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(d) Any city or county which borders on a city or county within which the project is located, and

(e) For a project of statewide, regional, or area wide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project.

C64) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (a), providing public notice of the availability of a draft EIR at the same time as sending a notice of completion to OPR, as provided under Section 15105. Mailing the notice to the last known name and address of all organizations and individuals who have previously requested such notice in writing by at least one of the following procedures:

(a) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper

of largest circulation from among the newspapers of general circulation in those areas.

(b) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(c) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

C65) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (c), disclosing the following in the notice:

(a) A brief description of the proposed project and its location.

(b) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(c) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(d) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(e) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(f) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

C66) Pursuant to Title 14, California Code of Regulations, Section 15087, subdivision (g), furnishing copies of draft EIRs to public library systems serving in the area involve in order to make copies of EIRs available to the public.

C67) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (a), evaluating comments on environmental issues received from persons who reviewed the draft EIR, preparing a written response, and responding to comments received during the noticed comment period.

C68) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (b), describing in the written response the disposition of significant environmental issues raised. In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in

the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted.

C69) Pursuant to Title 14, California Code of Regulations, Section 15088, subdivision (c), where the response to comments makes important changes in the information contained in the text of the draft EIR, either:

(1) Revising the text in the body of the EIR, or

(2) Including marginal notes showing that the information is revised in the response to comments.

C70) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (a), recirculating an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.

C71) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (e), supporting a decision not to recirculate an EIR by substantial evidence in the administrative record.

C72) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (f), evaluating and responding to comments as provided in Section 15088.

C73) Pursuant to Title 14, California Code of Regulations, Section 15088.5, subdivision (g),summarizing the revisions made to the previously circulated draft EIR, when recirculating a revised EIR, either in whole or in part, in the revised EIR or by an

attachment to the revised EIR.

C74) Pursuant to Title 14, California Code of Regulations, Section 15089, subdivision (a), preparing a final EIR before approving the project.

C75) Pursuant to Title 14, California Code of Regulations, Section 15090, subdivision (a), certifying, prior to approving a project, that:

(a) The final EIR has been completed in compliance with CEQA;

(b) The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and

(c) The final EIR reflects the lead agency's independent judgment and analysis.

C76) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (a), not approving or carrying out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless making one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.

C77) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (b), supporting the findings required by subsection (a) by substantial evidence in the record.

C78) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision

(d), when making the findings required in subsection (a)(1), adopting a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

C79) Pursuant to Title 14, California Code of Regulations, Section 15091, subdivision (e), specifying the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

C80) Pursuant to Title 14, California Code of Regulations, Section 15092, subdivision (b), not deciding to approve or carry out a project for which an EIR was prepared unless either:

(a) The project as approved will not have a significant effect on the environment, or

(b) The agency has:

(i) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(ii) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section

15093.

C81) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (a), balancing, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

C82) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (b), when approving a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, stating in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

C83) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (c), if an agency makes a statement of overriding considerations, including the statement in the record of the project approval and mentioning it in the notice of determination.

C84) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (c), if a local agency is the lead agency, filing the notice of determination with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, filing the notice of determination with OPR.

C85) Pursuant to Title 14, California Code of Regulations, Section 15093, subdivision (d), retaining a notice of determination for not less than 9 months.

C86) Pursuant to Title 14, California Code of Regulations, Section 15094, subdivision (a), filing a notice of determination within 5 working days after approval of the project by the lead agency, which includes:

(a) An identification of the project including its common name where possible and its location.

(b) A brief description of the project.

(c) The date when the agency approved the project.

(d) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(e) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(f) Whether mitigation measures were made a condition of the approval of the project.

(g) Whether findings were made pursuant to Section 15091.

(h) Whether a statement of overriding considerations was adopted for the project.

(i) The address where a copy of the final EIR and the record of project approval may be examined.

C87) Pursuant to Title 14, California Code of Regulations, Section 15095:

(a) Filing a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Including the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retaining one or more copies of the final EIR as public records for a reasonable period of time.

Article 8. Time Limits

C88) Pursuant to Title 14, California Code of Regulations, Section 15100, subdivision (a), adopting time limits to govern their implementation of CEQA consistent with this article.

C89) Pursuant to Title 14, California Code of Regulations, Section 15104, convening a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting.

Article 9. Contents of Environmental Impact Reports

C90) Pursuant to Title 14, California Code of Regulations, Section 15122, including in an EIR at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

C91) Pursuant to Title 14, California Code of Regulations, Section 15123, subdivision (a), including in an EIR a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

C92) Pursuant to Title 14, California Code of Regulations, Section 15123, subdivision (b), identifying in the summary:

(a) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(b) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(c) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

C93) Pursuant to Title 14, California Code of Regulations, Section 15124, containing the following information in the description of the project:

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project to help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and aid the decision makers in preparing findings or a statement of

overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR, and including, to the extent that the information is know:

(i) A list of the agencies that are expected to use the EIR in their decision-making,

(ii) A list of permits and other approvals required to implement the project, and

(iii) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

C94) Pursuant to Title 14, California Code of Regulations, Section 15125, subdivision (a), including in an EIR, a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is

published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.

C95) Pursuant to Title 14, California Code of Regulations, Section 15126, considering all phases of a project when evaluating its impact on the environment: planning, acquisition, development, and operation. Listing the subjects below, preferably in separate sections or paragraphs of the EIR, if they are not discussed separately, including in the EIR, a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

C96) Pursuant to Title 14, California Code of Regulations, Section 15126.2, subdivision (a), identifying and focusing on the significant environmental effects of the proposed project, in an EIR.

C97) Pursuant to Title 14, California Code of Regulations, Section 15126.4, including and discussing mitigating measures in an EIR.

C98) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (a), describing in an EIR, a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, evaluating the comparative merits of the alternatives, and selecting a range of project alternatives for examination and publicly disclosing its reasoning for selecting those alternatives.

C99) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (b), focusing the discussion of alternatives on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

C100) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (d), including in the EIR, sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.

C101) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (e), evaluating the specific alternative of "no project" along with its impact.

C102) Pursuant to Title 14, California Code of Regulations, Section 15126.6, subdivision (f), setting forth in the EIR, the rule of reason, which requires only those alternatives necessary to permit a reasoned choice. Of those alternatives,

examining in detail in the EIR, only the ones that have been determined could feasibly attain most of the basic objectives of the project.

C103) Pursuant to Title 14, California Code of Regulations, Section 15128, containing, in an EIR, a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR.

C104) Pursuant to Title 14, California Code of Regulations, Section 15129, identifying, in an EIR, all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

C105) Pursuant to Title 14, California Code of Regulations, Section 15130, subdivision (a), discussing in an EIR, cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

C106) Pursuant to Title 14, California Code of Regulations, Section 15130, subdivision (b), reflecting in the discussion of cumulative impacts, the severity of the impacts

and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone.

C107) Pursuant to Title 14, California Code of Regulations, Section 15132, including in the final EIR:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the lead agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

Article 10. Considerations in Preparing EIRs and Negative Declarations

C108) Pursuant to Title 14, California Code of Regulations, Section 15140, writing EIRs in plain language and using appropriate graphics so that decision makers and the public can rapidly understand the documents.

C109) Pursuant to Title 14, California Code of Regulations, Section 15142, preparing an EIR using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors.

C110) Pursuant to Title 14, California Code of Regulations, Section 15143, focusing the the EIR on the significant effects on the environment and discussing them with emphasis in proportion to their severity and probability of occurrence.

C111) Pursuant to Title 14, California Code of Regulations, Section 15145, if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, noting its conclusion and terminating discussion of the impact.

C112) Pursuant to Title 14, California Code of Regulations, Section 15147, including, in an EIR, summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public.

C113) Pursuant to Title 14, California Code of Regulations, Section 15148, citing in the EIR, all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

C114) Pursuant to Title 14, California Code of Regulations, Section 15149, subdivision (b), establishing requirements or conditions on project design, construction, or operation in order to protect or enhance the environment.

C115) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (b), stating in the EIR or negative declaration where the incorporated documents will be available for inspection.

C116) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (c), where an EIR or negative declaration uses incorporation by reference, briefly summarizing the incorporated part of the referenced document where possible or briefly describing if the data or information cannot be summarized.

C117) Pursuant to Title 14, California Code of Regulations, Section 15150, subdivision (d), where an agency incorporates information from an EIR that has previously been reviewed through the state review system, including in the summary or designation described in subdivision (c), the state identification number of the incorporated document.

C118) Pursuant to Title 14, California Code of Regulations, Section 15152, subdivision (f) providing a later EIR when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, and providing a negative declaration when the provisions of Section 15070 are met.

C119) Pursuant to Title 14, California Code of Regulations, Section 15153, subdivision (b), when a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, using the following procedures:

(a) Reviewing the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(i) The general environmental setting of the project,

(ii) The significant environmental impacts of the project, and

(iii) Alternatives and mitigation measures related to each significant effect.

(b) If the lead agency believes that the EIR would meet the requirements of Subsection (1), providing public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project, and including in the notice as a minimum:

(i) An identification of the project with a brief description;

(ii) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(iii) A listing of places where copies of the EIR may be examined; and

(iv) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(c) Preparing responses to comments received during the review period.

(d) Before approving the project:

(i) Considering the information in the EIR including comments received during the review period and responses to those comments,

(ii) Deciding either on its own or on a staff recommendation whether the EIR is adequate for the project at hand,

(iii) Making or requiring certification to be made as described in Section 15090, and

(iv) Making findings as provided in Sections 15091 and 15093 as necessary.

(e) After making a decision on the project, filing a notice of determination.

Article 11. Types of EIRs

C120) Pursuant to Title 14, California Code of Regulations, Section 15162, subdivision (a), determining, in order for a subsequent EIR to be prepared for that project, when an EIR has been certified or a negative declaration adopted for a project, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the

involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(i) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(ii) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(iii) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(iv) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

C121) Pursuant to Title 14, California Code of Regulations, Section 15162, subdivision (b), preparing a subsequent EIR if required under subsection (a), if changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, otherwise, determining whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

C122) Pursuant to Title 14, California Code of Regulations, Section 15164, subdivision (a), preparing an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

C123) Pursuant to Title 14, California Code of Regulations, Section 15164, subdivision (e), including in an addendum to an EIR, their findings on the project, or elsewhere in the record, a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162, and supporting the explanation by substantial evidence.

C124) Pursuant to Title 14, California Code of Regulations, Section 15165, preparing a single program EIR for the ultimate project as described in Section 15168, where

individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect.

C125) Pursuant to Title 14, California Code of Regulations, Section 15167, subdivision (a), subdivision (b), when a staged EIR has been prepared, preparing a supplement to the EIR when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

C126) Pursuant to Title 14, California Code of Regulations, Section 15168, subdivision (c), examining subsequent activities in the program in the light of the program EIR to determine whether an additional environmental document must be prepared.

C127) Pursuant to Title 14, California Code of Regulations, Section 15168, subdivision (e), when a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, including in the notice for the activity a statement that:

(a) This activity is within the scope of the program approved earlier, and

(b) The program EIR adequately describes the activity for the purposes of CEQA.

Article 11.5. Master Environmental Impact Report

C128) Pursuant to Title 14, California Code of Regulations, Section 15176, if using a Master EIR, including all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(i) The specific type of project anticipated to be undertaken.

(ii) The maximum and minimum intensity of any anticipated subsequent project.

(iii) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(iv) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

C129) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision

(c), determining whether a subsequent project is within the scope of the Master EIR based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

C130) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision (d), prior to approval of the proposed subsequent project, incorporating all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

C131) Pursuant to Title 14, California Code of Regulations, Section 15177, subdivision (e), when approving a project pursuant to this section, filing a notice in the manner required by Section 15075.

C132) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (a), when a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, preparing a mitigated negative declaration or a focused EIR if, after

preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Determining whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate based upon a review of the proposed subsequent project in light of the Master EIR.

C133) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (b), preparing a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(a) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(b) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

C134) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (c), preparing a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared, according to the following:

(a) Incorporating, in the focused EIR, by reference the Master EIR and

analyzing only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR.

(b) A focused EIR need not examine those effects upon, finding, prior to public release of the focused EIR, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(i) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(ii) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(iii) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(c) Including the above findings in the focused EIR prior to public release pursuant to Section 15087.

(d) Analyzing any significant environmental effects when:

(i) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(ii) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

C135) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (d), filing a notice of determination pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and filing a notice of determination pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

C136) Pursuant to Title 14, California Code of Regulations, Section 15178, subdivision (e), upon determining that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process, reviewing according to Article 7 (commencing with Section 15080) of these guidelines, and

tiering the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

C137) Pursuant to Title 14, California Code of Regulations, Section 15179, the certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

Article 12. Special Situations

C138) Pursuant to Title 14, California Code of Regulations, Section 15184, whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, limiting the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. Complying with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment.

C139) Pursuant to Title 14, California Code of Regulations, Section 15185, subdivision (b), the decision making body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

C140) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (a), consulting with other agencies in the case that CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous

materials, wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR.

C141) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (b), when a project located within one-fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, performing the following:

(a) Consulting with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(b) Notifying the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR.

C142) Pursuant to Title 14, California Code of Regulations, Section 15186, subdivision (c), when the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(a) Notifying in writing and consulting with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. Including in the notice a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification.

(b) Making, on the basis of substantial evidence, one of the following written findings:

(i) Consultation identified none of the facilities specified in paragraph (2).

(ii) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

Article 13. Review and Evaluations of EIRs and Negative Declarations

C143) Pursuant to Title 14, California Code of Regulations, Section 15201, Including provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

C144) Pursuant to Title 14, California Code of Regulations, Section 15203, providing adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

C145) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (a), submitting draft EIRs and negative declarations to be reviewed by state

agencies to the State Clearinghouse, and including, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

C146) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (b), submitting the following environmental documents to the State Clearinghouse for review by state agencies:

(a) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(b) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(c) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(d) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

C147) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (c), including with any environmental documents submitted to the State Clearinghouse, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

C148) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (d), when an EIR or negative declaration is submitted to the State Clearinghouse for review, setting the review period at least as long as the period provided in the state review system operated by the State Clearinghouse, and in exceptional circumstances, requesting shorter review periods.

C149) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (e), submitting no less ten copies of an EIR or negative declaration unless the State Clearinghouse approves a lower number in advance.

C150) Pursuant to Title 14, California Code of Regulations, Section 15205, subdivision (f), submitting documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

C151) Pursuant to Title 14, California Code of Regulations, Section 15206, subdivision (a), submitting a draft EIR or negative declaration to the State Clearinghouse and to the appropriate metropolitan area council of governments for review and comment, and when such documents are submitted to the State Clearinghouse, including, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

C152) Pursuant to Title 14, California Code of Regulations, Section 15206, subdivision (b), determining that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(a) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(b) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located.

(c) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(d) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact specific areas of critical environmental.

(e) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(f) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(g) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

C153) Pursuant to Title 14, California Code of Regulations, Section 15208, keeping on file comments which may be received on a draft EIR or negative declaration.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

C154) Pursuant to Title 14, California Code of Regulations, Section 15223, when planning to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, consulting as soon as possible with the federal agency.

C155) Pursuant to Title 14, California Code of Regulations, Section 15225, subdivision (a), prior to using the federal document in this situation, giving notice, in the same manner as a notice of the public availability of a draft EIR under Section 15087, that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA.

Article 20. Definitions

C156) Pursuant to Title 14, California Code of Regulations, Section 15367, deciding whether an EIR or negative declaration will be required for the project and causing the document to be prepared.

Part D - California State Clearinghouse Handbook

D1) Pursuant to the California State Clearinghouse Handbook, pages 5-6, when submitting a draft negative declaration to SCH,

(1) Sending at least 15 copies which contain:

(a) Description and title of the project;

(b) Location of the project, preferably shown on a map;

(c) Name of the project proponent;

(d) A proposed finding that the project will not have a significant effect on the environment;

(e) An attached copy of the Initial Study documenting reasons to support the finding; and

(f) Mitigation measures, if any, included in the project to avoid potentially significant effects.

(2) Referencing any previously assigned number, if applicable.

D2) Pursuant to California State Clearinghouse Handbook, page 6, within five working days of approving a project for which a Negative Declaration has been adopted,

filing a Notice of Determination (NOD) with the county clerk of the county or counties where the project is located and with SCH.

D3) Pursuant to California State Clearinghouse Handbook, page 7, circulating a Notice of Preparation (NOP) to all Responsible and Trustee Agencies advising them of the district's intention to prepare a Draft EIR. This includes sending copies directly to all Responsible and Trustee Agencies. When there is a Responsible or Trustee state agency involved in a project, sending a copy of the NOP to the SCH, attaching the district's distribution list. The minimum content requirements for a NOP are:

(1) Description of the project;

(2) Location of the project, indicated either on an attached map (preferably a topographical map), or by a street address in an urbanized area;

(3) Salient environmental issues; and

(4) Probable environmental effects of the project.

D4) Pursuant to California State Clearinghouse Handbook, page 7, using a project number for all subsequent environmental documents for a project.

D5) Pursuant to California State Clearinghouse Handbook, page 7, submitting at least fifteen copies of any Draft EIR to SCH together with one copy of the NOC form.

D6) Pursuant to California State Clearinghouse Handbook, page 8, after receiving all public comments, including those of state agencies, preparing written responses and including them in the Final EIR. Certifying the Final EIR before approving the project.

D7) Pursuant to California State Clearinghouse Handbook, page 9, within five working days of approving a project for which an EIR was prepared, filing a Notice of Determination (NOD) with the county clerk of the county or counties where the project will be located and with SCH.

D8) Pursuant to California State Clearinghouse Handbook, page 10, when requesting a shortened review process for draft Negative Declarations and EIRs, contacting the SCH prior to submitting a request for shortened review explaining why the shortened review is needed and identify prior approval from Responsible state agencies. The request shall include the following criteria:

(1) The district is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

(2) The district is under severe time constraints with regard to financing or exercising options which cannot be met without shortening the review period.

(3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

(4) The health and safety of the community would be at risk unless the project is approved expeditiously.

(5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

(6) The district shall provide evidence that there has been prior consultation with Responsible and Trustee state agencies.

(7) Before submitting a shortened review request, the district must have obtained verbal or written approval for a shortened review period from Responsible and Trustee state agencies. The request letter from the district must identify which state agencies have been contacted and the agencies' responses to the request.

D9) Pursuant to California State Clearinghouse Handbook, page 10, when requesting a shortened review process, following the following procedures:

(1) The request must be made to SCH in writing by the decision-making body of the district, or an authorized representative of the district, and shall be made on district letterhead. When submitted by a representative, a copy of the resolution or ordinance from the district board delegating authority should be attached.

(2) The request must explain the "exceptional circumstances" for making the request.

(3) The request must be accompanied by 15 copies of the environmental document.

(4) SCH approval of a shortened review period must be granted before issuing the public notice of availability.

(5) The public review period must be at least as long as the review period set by SCH.

(6) The review period for a Negative Declaration shall not be shorter than 20 days. The district must specify the requested length of the shortened review period.

(7) The review period for a Draft EIR shall not be shorter than 30 days. The district must specify the requested length of the shortened review period.

(8) The district may use the Shortened Review Application form contained in the Handbook.

D10) Pursuant to California State Clearinghouse Handbook, page 15, filing Notices of Completion at SCH.

D11) Pursuant to California State Clearinghouse Handbook, page 15, providing public notice of the availability of a Draft EIR or a Negative Declaration which contains at least the following:

(1) Description of proposed project;

(2) Location of proposed project;

(3) Specific period during which comments on proposed project will be accepted;

(4) Date, time, and place of any public meetings on proposed project;

(5) Address where copies of Draft EIR or Negative Declaration are available for review; and

(6) Environmental effects of the project, if any.

D12) Pursuant to California State Clearinghouse Handbook, page 15, providing the notice of availability to all organizations and individuals who previously requested notice using at least one of the following notification methods:

(1) Publication in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of the notice on- and off-site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

D13) Pursuant to California State Clearinghouse Handbook, page 15, filing a Notice of Determination (NOD) within 5 days after a district approves or determines to carry out a project with the county clerk of the county or counties where the project will be located and SCH.

D14) Pursuant to California State Clearinghouse Handbook, pages 15-16, including in a Notice of Determination:

For a Negative Declaration:

(1) Identification of the project, including its common name or title, if possible;

(2) Location of the project;

(3) Brief description of the project;

(4) Date the agency approved the project;

(5) The determination by the approving agency that the project in its approved form will not have a significant effect on the environment;

(6) Statement that a Negative Declaration was prepared pursuant to the provisions of CEQA; and

(7) Address where a copy of the environmental document and record of project approval can be examined.

For an Environmental Impact Report (EIR):

(1) Identification of the project, including its common name or title, if possible;

(2) Location of the project;

(3) Brief description of the project;

(4) Date the agency approved the project;

(5) Determination by the approving agency whether the project in its approved form will have a significant effect on the environment;

(6) Statement that an EIR was prepared pursuant to the provisions of CEQA;

(7) Whether mitigation measures were made a condition of the approval of the project;

(8) Whether a statement of overriding considerations was adopted for the project;

(9) Whether findings were made pursuant to Section 15091 of the CEQA Guidelines; and

(10) Address where a copy of the final EIR and record of project approval may be examined.

Additionally, the notice shall be mailed to any person who has filed a written request for such notice.

D15) Pursuant to California State Clearinghouse Handbook, page 16, filing a Notice of Exemption (NOE) with the county clerk of the county or counties where the project is to be located. In addition the notice must be mailed to any person who has filed a written request for such notice.

D16) Pursuant to California State Clearinghouse Handbook, pages 16, including in any Notice of Exemption (NOE):

(1) A brief description of the project;

(2) A finding that the project is exempt, including a citation that references the CEQA Guidelines or statutory section under which it is found to be exempt; and

(3) A brief statement of reasons to support the finding.

It is estimated that the Santa Monica Community College District incurred more than $1,000 in staffing and other costs for the period from July 1, 2002 through June 30, 2003 to implement the new duties applicable community college districts mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon

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CHAPTER 1433

An act to add Division 13 (commencing with Section 21000) to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 18, 1970. Filed with Secretary of State September 18, 1970.]

The people of the State of California do enact as follows:

SECTION 1. Division 13 (commencing with Section 21000) is added to the Public Resources Code, to read:

DIVISION 13. ENVIRONMENTAL QUALITY

CHAPTER 1. POLICY

21000. The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activi-

ties so that major consideration is given to preventing environmental damage.

21001. The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

CHAPTER 2. SHORT TITLE

21050. This division shall be known and may be cited as the Environmental Quality Act of 1970.

CHAPTER 3. STATE AGENCIES, BOARDS AND COMMISSIONS

21100. All ~~state agencies,~~ boards, and commissions shall include in any report on any project they propose to carry out which could have a significant effect on the environment of the state, a detailed statement by the responsible state official setting forth the following:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact.

(d) Alternatives to the proposed action.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

21101. In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100.

21102. No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only planning, which could have a significant effect on the environment unless such request or authorization is accompanied by a detailed statement setting forth the matters specified in Section 21100.

21103. The Office of Planning and Research shall, in conjunction with appropriate state, regional, and local agencies, coordinate the development of objectives, criteria, and procedures to assure the orderly preparation and evaluation of environmental impact reports required by this division.

21104. Prior to the making of a detailed statement, the responsible state official shall consult with, and obtain comments from, any governmental agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

21105. The responsible state official shall include the environmental impact report, together with any comments received from other governmental agencies pursuant to Section 21104, as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature and to the general public.

21106. All state agencies, boards, and commissions shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.

21107. Every state agency, board and commission shall review its present statutory authority, rules, regulations, policies and procedures to determine any inconsistencies or deficiencies in such provisions which would hinder compliance with the provisions of this division, and shall propose to the Governor and the Legislature no later than January 1971, any measures necessary to comply with the intent, policies, and procedures of this division.

CHAPTER 4. LOCAL AGENCIES

21150. State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local governmental agencies for land acquisition or

construction projects which may have a significant effect on the environment, shall, unless exempted by formal procedures developed under the provisions of Section 21103, require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds, other than funds solely for planning purposes.

21151. The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by Section 65402 of the Government Code.

CHAPTER 1154

An act to amend Sections 21100, 21102, 21104, 21105, 21150, and 21151 of, to add Sections 21108, 21152, 21153, and 21154 to, to add Chapter 2.5 (commencing with Section 21060), Chapter 2.6 (commencing with Section 21080), Chapter 5 (commencing with Section 21160), and Chapter 6 (commencing with Section 21165) to Division 13 of,

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to repeal Sections 21103 and 21107 of, and to repeal Sections 21152 and 21153, as added by Chapter 971 of the Statutes of 1972, of, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor December 5, 1972. Filed with Secretary of State December 5, 1972.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.5 (commencing with Section 21060) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 2.5. DEFINITIONS

21060. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

21060.5. "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.

21061. "Environmental impact report" means a detailed statement setting forth the matters specified in Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project.

21062. "Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency is a local agency, and not a state agency, board or commission.

21063. "Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

21065. "Project" means the following:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more

public agencies.

21066. "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of such entities.

21067. "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

SEC. 2.3. Chapter 2.6 (commencing with Section 21080) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 2.6. GENERAL

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to ministerial projects proposed to be carried out or approved by public agencies.

21082. All public agencies shall adopt by ordinance, resolution, rule or regulation, objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division. The objectives, criteria and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

21083. The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. Such guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports in a manner consistent with this division.

Such guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment". Such criteria shall require a finding of "significant effect on the environment" if any of the following conditions exist:

(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals;

(b) The possible effects of a project are individually limited but cumulatively considerable;

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(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Such guidelines shall also include procedures for determining the lead agency pursuant to the provisions of Section 21165.

The Office of Planning and Research shall develop and prepare such proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. No later than 60 days after the effective date of this section the Secretary of the Resources Agency shall certify and adopt such guidelines pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2, of the Government Code, which shall become effective upon the filing thereof, provided that such guidelines shall not be adopted without compliance with Sections 11423, 11424 and 11425 of the Government Code.

21083.5. The guidelines prepared and adopted pursuant to Section 21083 may provide that when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an environmental impact report required by this division, provided that such statement, or the part thereof so used, shall comply with the requirements of this division and the guidelines adopted pursuant thereto.

21084. The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the list or classification of projects referred to in this section do not have a significant effect on the environment.

21085. All classes of projects designated pursuant to Section 21084, together with emergency repairs to public service facilities necessary to maintain service, shall be exempt from the provisions of this division.

21086. A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. Such a request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that such class of projects does, or does not, have a significant effect on the environment.

The Office of Planning and Research shall review each such request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of such recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 which are exempt from the requirements of this division.

The addition or deletion of a class of projects, as provided in this

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section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083, 21084, and 21087.

21087. The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the Secretary of the Resources Agency in the same manner as provided in Section 21083 for the adoption of the original guidelines.

21088. The Secretary of the Resources Agency shall provide for the timely distribution to all public agencies of the guidelines and any amendments or changes thereto. In addition, the Secretary of the Resources Agency may provide for publication of a bulletin to provide public notice of the guidelines, or any amendments or changes thereto, and of the completion of environmental impact reports prepared in compliance with this division.

21089. A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing an environmental impact report for such project.

21090. For all purposes of this division all public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan shall be deemed a single project.

SEC. 2.5. Section 21100 of the Public Resources Code is amended to read:

21100. All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact.

(d) Alternatives to the proposed action.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

(g) The growth-inducing impact of the proposed action.

SEC. 3. Section 21102 of the Public Resources Code is amended to read:

21102. No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes

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expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report.

Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

SEC. 4. Section 21103 of the Public Resources Code is repealed.

SEC. 6. Section 21104 of the Public Resources Code is amended to read:

21104. Prior to completing an environmental impact report, the responsible state agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

SEC. 7. Section 21105 of the Public Resources Code is amended to read:

21105. The responsible state agency shall include the environmental impact report as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature. It shall also be available for inspection by the general public who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the responsible state agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

SEC. 8. Section 21107 of the Public Resources Code is repealed.

SEC. 9. Section 21108 is added to the Public Resources Code, to read:

21108. Whenever a state agency, board or commission approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the Secretary of the Resources Agency. Such notice shall indicate the determination of the agency, board or commission whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

SEC. 10. Section 21150 of the Public Resources Code is amended to read:

21150. State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for

possible future actions which the agency, board, or commission has not approved, adopted, or funded.

SEC. 11. Section 21151 of the Public Resources Code is amended to read:

21151. All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

SEC. 11.5. Section 21152, as added to the Public Resources Code by Chapter 971 of the Statutes of 1972, is repealed.

SEC. 12. Section 21152 is added to the Public Resources Code, to read:

21152. Whenever a local agency approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the county clerk of the county, or counties, in which the project will be located. Such notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

SEC. 12.5. Section 21153, as added to the Public Resources Code by Chapter 971 of the Statutes of 1972, is repealed.

SEC. 13. Section 21153 is added to the Public Resources Code, to read:

21153. Prior to completing an environmental impact report, every local agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

SEC. 14. Section 21154 is added to the Public Resources Code, to read:

21154. Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

SEC. 15. Chapter 5 (commencing with Section 21160) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 5. SUBMISSION OF INFORMATION

21160. Whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to

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determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report.

If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report.

21161. Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of such report to be filed with the Secretary of the Resources Agency. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

SEC. 16. Chapter 6 (commencing with Section 21165) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 6. LIMITATIONS

21165. When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

21166. When an environmental impact report has been prepared for a project pursuant to this division, no subsequent environmental impact report shall be required unless either of the following occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

21167. Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be

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commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by Section 21108 or 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by Sections 21108 or 21152.

21167.5. Proof of prior service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in Section 21167 identifying the project shall be filed concurrently with the initial pleading in such action or proceeding.

21168. Any action or proceeding to attack, review, set aside, void or annul a determination or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

21168.5. In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

21168.6. In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to such commission.

21168.7. Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.

21169. Any project defined in subdivision (c) of Section 21065 undertaken, carried out or approved on or before the effective date of this section and the issuance by any public agency of any lease, permit, license, certificate or other entitlement for use executed or issued on or before the effective date of this section notwithstanding a failure to comply with this division, if otherwise legal and valid, is

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hereby confirmed, validated and declared legally effective. Any project undertaken by a person which was supported in whole or part through contracts with one or more public agencies on or before the effective date of this section, notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective.

21170. (a) Section 21169 shall not operate to confirm, validate or give legal effect to any project the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division and which was pending and undetermined on the effective date of this section; provided, however, that Section 21169 shall operate to confirm, validate or give legal effect to any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance by a public agency of any lease, permit, license, certificate or other entitlement for use, substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.

(b) Section 21169 shall not operate to confirm, validate or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section to be illegal, void or ineffective because of noncompliance with this division.

21171. This division, except for Section 21169, shall not apply to the issuance of any lease, permit, license, certificate or other entitlement for use for any project defined in subdivision (c) of Section 21065 or to any project undertaken by a person which is supported in whole or in part through contracts with one or more public agencies until the 121st day after the effective date of this section. This section shall not apply to any project to which Section 21170 is applicable or to any successor project which is the same as, or substantially identical to, such a project.

This section shall not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

21172. This division shall not apply to any project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

21172.5. Until the 121st day after the effective date of this section, any objectives, criteria and procedures adopted by public agencies in compliance with this division shall govern the evaluation of

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projects defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental impact reports on such projects when required by this division.

Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after the effective date of this section, if otherwise legally sufficient, shall, when completed, be deemed to be in compliance with this division and no further environmental impact report shall be required except as provided in Section 21166.

21173. If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

21174. No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer including, but not limited to, the powers and authority granted to the California Coastal Zone Conservation Commission or any regional coastal zone conservation commission pursuant to Division 18 (commencing with Section 27000) of the Public Resources Code. To the extent of any inconsistency or conflict between the provisions of the California Coastal Zone Conservation Act of 1972, Division 18 (commencing with Section 27000) of the Public Resources Code, and the provisions of this division, the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code shall control.

SEC. 17. The Legislature finds and declares that Section 1 of this act is intended to clarify existing provisions of the Environmental Quality Act of 1970 and thereby to facilitate and to promote uniform administration of the Environmental Quality Act of 1970 throughout the state. It is therefore the intent of the Legislature in enacting Section 1 of this act only to declare and to clarify existing law.

SEC. 18. Sections 11.5 and 12.5 of this act shall become operative at the same time as Chapter 971 of the Statutes of 1972 becomes effective.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into effect immediately. The facts constituting such necessity are: In order to provide a clear definition of the responsibilities of governmental agencies under the Environmental Quality Act of 1970, and in order to lend certainty to the status of various projects which have been, or are about to be, undertaken so as to permit the orderly processing and evaluation of such projects at the earliest possible time it is necessary that this act take effect immediately.

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CHAPTER 222

An act to amend Section 21062 of, and to add Sections 21175 and 21176 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 4, 1975. Filed with Secretary of State July 5, 1975.]

The people of the State of California do enact as follows:

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SECTION 1. Section 21062 of the Public Resources Code is amended to read:

21062. "Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency and a local agency formation commission are local agencies, and neither is a state agency, board, or commission.

SEC. 2. Section 21175 is added to the Public Resources Code, to read:

21175. In the event that a local agency formation commission, acting pursuant to the provisions of Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the Government Code, has approved a project without complying with this division, such approval is hereby confirmed, validated, and declared legally effective notwithstanding the failure to comply with this division; provided, that such approval shall have occurred prior to February 7, 1975.

SEC. 3. Section 21176 is added to the Public Resources Code, to read:

21176. (a) Section 21175 shall not operate to confirm, validate, or give legal effect to any project, the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to February 7, 1975, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division, and which was pending and undetermined on February 7, 1975.

(b) Section 21175 shall not operate to confirm, validate, or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section, to be illegal, void, or ineffective because of noncompliance with this division.

SEC. 4. Notwithstanding any other provision of law, any matter initiated pursuant to Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the Government Code, and pending before a local agency formation commission on February 7, 1975, may be continued by such local agency formation commission for such time as may be necessary to comply with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to remove ambiguity about the status of various proposals which have been approved by local agency formation commissions and about proposals currently pending before such commissions as soon as possible, it is necessary that this act take effect immediately.

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CHAPTER 1312

An act to amend Sections 21050, 21061, 21080, 21082, 21083, 21084, 21085, 21087, 21089, 21100, 21168, and 21168.5 of, and to add Sections 21002, 21002.1, 21003, 21060.3, 21061.1, 21064, 21068, 21069, 21081, 21082.1, 21092, 21100.1, 21151.5, and 21167.1 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 1976. Filed with Secretary of State September 29, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 21002 is added to the Public Resources Code, to read:

21002. The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as

proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one of more significant effects thereof.

SEC. 1.5. Section 21002.1 is added to the Public Resources Code, to read:

21002.1. In order to achieve the objectives set forth in Section 21002 the Legislature finds and delares that the following policy shall apply to the use of environmental impact reports prepared pursuant to the provisions of this division:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which such significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so.

(c) In the event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, such project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a local agency which is functioning as a lead agency shall differ from that of a local agency which is functioning as a responsible agency. A local agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A local agency functioning as a responsible agency shall have responsibility for considering only the effects of those activities involved in a project, which it is required by law to carry out or approve.

SEC. 2. Section 21003 is added to the Public Resources Code, to read:

21003. The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all such procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in such a manner that they will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports covering larger geographical areas be used to contribute to information required in specific environmental impact reports.

SEC. 3. Section 21050 of the Public Resources Code is amended to read:

21050. This division shall be known and may be cited as the California Environmental Quality Act.

SEC. 4. Section 21060.3 is added to the Public Resources Code, to read:

21060.3. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

SEC. 5. Section 21061 of the Public Resources Code is amended to read:

21061. "Environmental impact report" means a detailed statement setting forth the matters specified in Sections 21100 and 21100.1; provided that information or data which is relevant to such a statement and is a matter of public record or is generally available to the public need not be repeated in its entirety in such statement, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. An environmental impact report also includes any comments which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

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In order to facilitate the use of environmental impact reports, public agencies shall require that such reports contain an index or table of contents and a summary. Failure to include such index, table of contents, or summary shall not constitute a cause of action pursuant to Section 21167.

SEC. 5.1. Section 21061.1 is added to the Public Resources Code, to read:

21061.1. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

SEC. 6. Section 21064 is added to the Public Resources Code, to read:

21064. "Negative declaration" means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

SEC. 7. Section 21068 is added to the Public Resources Code, to read:

21068. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment.

SEC. 7.1. Section 21069 is added to the Public Resources Code, to read:

21069. "Responsible agency" means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

SEC. 8. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(c) In the event that a public agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such public agency shall adopt a negative declaration to that effect.

SEC. 9. Section 21081 is added to the Public Resources Code, to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof unless such public agency makes one, or more, of the following findings:

(a) Changes or alterations have been required in, or incorporated into, such project which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and such changes have been adopted by such other agency, or can and should be adopted by such other agency.

(c) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

SEC. 9.5. Section 21082 of the Public Resources Code is amended to read:

21082. All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

SEC. 9.6. Section 21082.1 is added to the Public Resources Code, to read:

21082.1. Any environmental impact report or negative declaration prepared pursuant to the requirement of this division shall be prepared directly by, or under contract to, a public agency.

This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information to the public agency responsible for preparing an environmental impact report or negative declaration. Such information may be submitted in any format and may be included in whole or in part in any such report or declaration.

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SEC. 10. Section 21083 of the Public Resources Code is amended to read:

21083. The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. Such guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

Such guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment". Such criteria shall require a finding that a project may have a "significant effect on the environment" if any of the following conditions exist:

(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a project are individually limited but cumulatively considerable. As used in this subdivision, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Such guidelines shall also include procedures for determining the lead agency pursuant to the provisions of Section 21165.

Such guidelines shall also include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that it should be submitted to appropriate state agencies for review and comment prior to completion of an environmental impact report or negative declaration thereon.

The Office of Planning and Research shall develop and prepare such proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. No later than 60 days after the effective date of this section the Secretary of the Resources Agency shall certify and adopt such guidelines pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code, which shall become effective upon the filing thereof, provided that such guidelines shall not be adopted without compliance with Sections 11423, 11424, and 11425 of the Government Code.

SEC. 10.5. Section 21084 of the Public Resources Code is amended to read:

21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of this division. In

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adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the list or classification of projects referred to in this section do not have a significant effect on the environment.

(b) No project of the Department of Transportation which will result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an official state scenic highway, as designated pursuant to Section 262 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a).

SEC. 11. Section 21085 of the Public Resources Code is amended to read:

21085. All classes of projects designated pursuant to Section 21084 shall be exempt from the provisions of this division.

SEC. 12. Section 21087 of the Public Resources Code is amended to read:

21087. The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the Secretary of the Resources Agency in conformance with Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code.

SEC. 13. Section 21089 of the Public Resources Code is amended to read:

21089. A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing a negative declaration or an environmental impact report for such project.

SEC. 15. Section 21092 is added to the Public Resources Code, to read:

21092. Any public agency which is preparing an environmental impact report or a negative declaration shall provide public notice of such fact within a reasonable period of time prior to final adoption by the public agency of such environmental impact report or negative declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(a) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(b) Posting of notice by the public agency on- and off-site in the area where the project is to be located.

(c) Direct mailing to owners of contiguous property.

The alternatives for providing notice specified in subdivisions (a) to (c), inclusive, shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency 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 project.

SEC. 16. Section 21100 of the Public Resources Code is amended to read:

21100. All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The significant environmental effects of the proposed project.

(b) Any significant environmental effects which cannot be avoided if the project is implemented.

(c) Mitigation measures proposed to minimize the significant environmental effects including, but not limited to, measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

(d) Alternatives to the proposed project.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any significant irreversible environmental changes which would be involved in the proposed project should it be implemented.

(g) The growth-inducing impact of the proposed project.

The report shall also contain a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

SEC. 17. Section 21100.1 is added to the Public Resources Code, to read:

21100.1. The information described in subdivisions (e) and (f) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

SEC. 18. Section 21151.5 is added to the Public Resources Code, to read:

21151.5. Local agencies shall establish, by ordinance or resolution, time limits, not to exceed one year, for completing environmental impact reports and negative declarations for projects described in subdivision (c) of Section 21065. Such ordinances or resolutions may establish different time limits for different types or classes of projects, but all such limits shall be measured from the date on which an application requesting approval of such project is received by the

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local agency. The ordinances required by this section may provide for a reasonable extension of such time period in the event that unforeseen circumstances justify additional time and that the project applicant consents thereto.

SEC. 19. Section 21167.1 is added to the Public Resources Code, to read:

21167.1. In all actions brought pursuant to Section 21167, including the hearing of any such action on appeal from the decision of a lower court, all courts wherein such actions are or may hereafter be pending, shall give such actions preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

SEC. 19.1. Section 21168 of the Public Resources Code is amended to read:

21168. Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

SEC. 19.2. Section 21168.5 of the Public Resources Code is amended to read:

21168.5. In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

SEC. 20. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because there are minor savings as well as minor costs in this act which, in the aggregate, do not result in significant identifiable cost changes.

SEC. 21. The Legislature declares that it makes no finding whether Sections 21002, 21002.1, and 21082.1, as added to the Public Resources Code by this act, are, or are not, declaratory of existing law.

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CHAPTER 1200

An act to add Chapter 4.5 (commencing with Section 65920) to Division 1 of Title 7 of the Government Code, and to amend Sections 21002.1, 21080, 21080.5, 21083.5, 21104, 21105, 21151.5, 21153, 21165, 21166, 21167, and 21174 of, and to add Sections 21080.1, 21080.2, 21080.3, 21080.4, 21083.6, 21083.7, 21100.2, 21167.2, and 21167.3 to, the Public Resources Code, relating to development projects, and making an appropriation therefor.

[Approved by Governor September 30, 1977. Filed with Secretary of State October 1, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.5 (commencing with Section 65920) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 4.5. REVIEW AND APPROVAL OF DEVELOPMENT PROJECTS

Article 1. General Provisions

65920. Notwithstanding any other provision of law, the provisions of this chapter shall apply to all public agencies to the extent specified in this chapter. To the extent that the provisions of this chapter conflict with any other provision of law, the provisions of this chapter shall prevail.

65921. The Legislature finds and declares that there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of this chapter shall be applicable to all public agencies, including charter cities.

65922. The provisions of this chapter shall not apply to the State Energy Resources Conservation and Development Commission.

65923. The Office of Planning and Research shall ensure that all state agencies comply with applicable requirements of this chapter.

65924. With respect to any development project an application for which has been accepted as complete prior to January 1, 1978, the deadlines specified in Sections 65950 and 65952 shall be measured from January 1, 1978.

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Article 2. Definitions

65925. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

65926. "Air pollution control district" means any district created or continued in existence pursuant to the provisions of Part 3 (commencing with Section 40000) of Division 26 of the Health and Safety Code.

65927. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

65928. "Development project" means any project undertaken for the purpose of development.

65929. "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project.

65930. "Local agency" means any public agency other than a state agency. For purposes of this chapter, a redevelopment agency and a local agency formation commission are local agencies and neither is a state agency.

65931. "Project" means any activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

65932. "Public agency" means any state agency, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

65933. "Responsible agency" means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

65934. "State agency" means any agency, board, or commission of state government. For all purposes of this chapter, the term "state agency" shall include an air pollution control district.

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Article 3. Applications for Development Projects

65940. Not later than June 30, 1978, each state agency shall compile one or more lists which shall specify in detail the information which will be required from any applicant for a development project. Copies of such information shall be made available to all applicants for development projects and to any person who requests such information.

65941. The information compiled pursuant to Section 65940 shall also indicate the criteria which such agency will apply in order to determine the completeness of any application submitted to it for a development project.

65942. The information and the criteria specified in Sections 65940 and 65941 shall be revised as needed so that they shall be current and accurate at all times.

65943. Not later than 30 calendar days after any public agency has received an application for a development project, such agency shall determine in writing whether such application is complete and shall immediately transmit such determination to the applicant for the development project. In the event that the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete.

65944. After a public agency accepts an application as complete, such agency shall not subsequently request of an applicant any new or additional information which, with respect to a state agency, was not specified in the list prepared pursuant to Section 65940, or, with respect to a local agency, was not required as part of the application. Such agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

Article 4. Consolidated Hearings on Development Projects

65945. In the event that a development project requires approval by more than one public agency, the Office of Planning and Research shall, to the maximum extent feasible, consolidate the various hearings which may be required in order to minimize the time required for such hearings. Such consolidation shall be for procedural purposes only and shall not be construed as consolidating the statutory responsibilities of the public agencies conducting the consolidated hearings.

Article 5. Approval of Development Permits

65950. Any public agency which is the lead agency for a development project shall approve or disapprove such project within one year from the date on which an application requesting approval of such project has been received and accepted as complete by such

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agency.

65951. In the event that a combined environmental impact report-environmental impact statement is being prepared on a development project pursuant to Section 21083.6 of the Public Resources Code, a lead agency may waive the time limits established in Section 65950. In any event, such lead agency shall approve or disapprove such project within 60 days after the combined environmental impact report-environmental impact statement has been completed and adopted.

65952. Any public agency which is a responsible agency for a development project shall approve or disapprove such project within whichever of the following periods of time is longer:

(a) Within 180 days from the date on which the lead agency has approved or disapproved such project.

(b) Within 180 days of the date on which completed applications for such projects have been received and accepted as complete by each such responsible agency.

65953. All time limits specified in this article are maximum time limits for approving or disapproving development projects. All public agencies shall, if possible, approve or disapprove development projects in shorter periods of time.

65954. The time limits established by this article shall not apply in the event that federal statutes or regulations require time schedules which exceed such time limits.

65955. The time limits established by this article shall not apply to applications to appropriate water where such applications have been protested pursuant to Chapter 4 (commencing with Section 1330) of Part 2 of Division 2 of the Water Code.

65956. In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a project within the time limits required by this article, such failure to act shall be deemed approval of the development project.

65957. The time limits established by Sections 65950 and 65952 may be extended for a period not to exceed 90 days upon consent of the public agency and the applicant.

SEC. 1.5. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to the provisions of this division:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which such significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so.

(c) In the event that economic, social, or other conditions make

it infeasible to mitigate one or more significant effects of a project on the environment, such project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a public agency which is functioning as a lead agency shall differ from that of a public agency which is functioning as a responsible agency. A public agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A public agency functioning as a responsible agency shall have responsibility for considering only the effects of those activities involved in a project, which it is required by law to carry out or approve. The provisions of this subdivision shall apply only to decisions by a public agency to carry out or approve a project and shall not limit the scope of the comments such agency may wish to make pursuant to Section 21104 or 21153.

SEC. 2. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(c) In the event that a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead agency shall adopt a negative declaration to that effect.

SEC. 3. Section 21080.1 is added to the Public Resources Code, to read:

21080.1. The lead agency shall have the responsibility for

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determining whether an environmental impact report or a negative declaration shall be required for any project subject to the provisions of this division. Such determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

SEC. 4. Section 21080.2 is added to the Public Resources Code, to read:

21080.2. In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 45 days from the date on which an application for a project has been received and accepted as complete by the lead agency.

SEC. 5. Section 21080.3 is added to the Public Resources Code, to read:

21080.3. (a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies.

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist such lead agency in determining the various responsible agencies for a proposed project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

SEC. 6. Section 21080.4 is added to the Public Resources Code, to read:

21080.4. (a) In the event that a lead agency determines that an environmental impact report is required for a project, such lead agency shall immediately send notice of such determination by certified mail to each responsible agency. Upon receipt of such notice, each responsible agency shall specify to the lead agency the scope and content of the environmental information which is germane to such responsible agency's statutory responsibilities in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. Such information shall be specified in writing and shall be communicated to the lead agency by certified mail not later than 45 days after receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) In order to expedite the requirements of subdivision (a), the lead agency or any responsible agency may request one or more meetings between representatives of such agencies for the purpose of assisting the lead agency to determine the scope and content of the environmental information such responsible agency may require. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after they have been requested.

(c) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist such lead agency in determining the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

(d) In the event that a state agency is a responsible agency subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency within the required time period.

SEC. 6.5. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d) of this section, to be submitted in support of any of the activities listed in subdivision (b), such plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) The provisions of this section shall apply only to regulatory programs or portions thereof which involve:

(1) The issuance to a person, other than a public agency, of a lease, permit, license, certificate, or other entitlement for use; or

(2) The adoption or approval of standards, rules, regulations or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) of this division.

(d) In order to qualify for certification pursuant to this section, a regulatory program shall require utilization of an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decisionmaking and shall meet all of the following criteria;

(1) The enabling legislation of the regulatory program shall:

(i) Include protection of the environment among its principal purposes.

(ii) Contain authority for the administering agency to promulgate rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency shall:

(i) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

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(ii) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(iii) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.

(iv) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(v) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Such notices shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

(vi) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, such notification. The notification shall be made in a manner that will provide the public or any such person with sufficient time to review and comment on such filing.

(3) The plan or other written documentation required by the regulatory program shall:

(i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.

(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

(e) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program no longer meets such qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

SEC. 7. Section 21083.5 of the Public Resources Code is amended to read:

21083.5. The guidelines prepared and adopted pursuant to Section 21083 shall provide that when an environmental impact statement

has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an environmental impact report required by this division, provided that such statement, or the part thereof so used, shall comply with the requirements of this division and the guidelines adopted pursuant thereto.

SEC. 8. Section 21083.6 is added to the Public Resources Code, to read:

21083.6. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, an applicant may request and the lead agency may waive the time limits established pursuant to Section 21100.2 or 21151.5 if it finds that additional time is required to prepare a combined environmental impact report-environmental impact statement and that the time required to prepare such a combined document would be shorter than that required to prepare each document separately.

SEC. 9. Section 21083.7 is added to the Public Resources Code, to read:

21083.7. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the lead agency shall, whenever possible, use the environmental impact statement as such environmental impact report as provided in Section 21083.5. In order to implement the provisions of this section, each lead agency to which this section is applicable shall consult, as soon as possible, with the agency required to prepare such environmental impact statement.

SEC. 10. Section 21100.2 is added to the Public Resources Code, to read:

21100.2. Each state agency shall establish, by resolution or order, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for negative declarations, for projects described in subdivision (c) of Section 21065. Such time limits shall apply only to those circumstances in which such state agency is the lead agency for a project. Such resolutions or orders may establish different time limits for different types or classes of projects, but all such limits shall be measured from the date on which an application requesting approval of such project is received and accepted as complete by the state agency. The resolutions or orders required by this section may provide for a reasonable extension of such time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 11. Section 21104 of the Public Resources Code is amended

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to read:

21104. Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

The state lead agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of such highway or freeway.

SEC. 12. Section 21105 of the Public Resources Code is amended to read:

21105. The state lead agency shall include the environmental impact report as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature. It shall also be available for inspection by any member of the general public, who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the state lead agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

SEC. 13. Section 21151.5 of the Public Resources Code is amended to read:

21151.5. Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for negative declarations, for projects described in subdivision (c) of Section 21065. Such time limits shall apply only to those circumstances in which such local agency is the lead agency for a project. Such ordinances or resolutions may establish different time limits for different types or classes of projects, but all such limits shall be measured from the date on which an application requesting approval of such project is received and accepted as complete by the local agency. The ordinances required by this section may provide for a reasonable extension of such time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 14. Section 21153 of the Public Resources Code is amended to read:

21153. Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

SEC. 15. Section 21165 of the Public Resources Code is amended to read:

21165. When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may

have a significant effect on the environment shall be made by the lead agency; and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency, or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project, may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate, within 21 days of receiving such request, the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

SEC. 16. Section 21166 of the Public Resources Code is amended to read:

21166. When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

SEC. 17. Section 21167 of the Public Resources Code is amended to read:

21167. Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of

Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If such notice has not been filed, such action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

SEC. 18. Section 21167.2 is added to the Public Resources Code, to read:

21167.2. If no action or proceeding alleging that an environmental impact report does not comply with the provisions of this division is commenced during the period prescribed in subdivision (c) of Section 21167, the environmental impact report shall be conclusively presumed to comply with the provisions of this division for purposes of its use by responsible agencies, unless the provisions of Section 21166 are applicable.

SEC. 19. Section 21167.3 is added to the Public Resources Code, to read:

21167.3. If an action or proceeding alleging that an environmental impact report does not comply with the provisions of this division is commenced during the period described in subdivision (c) of Section 21167, responsible agencies shall assume that the environmental impact report for a project does comply with the provisions of this division and shall issue a conditional approval or disapproval of such project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report does comply with the provisions of this division.

SEC. 19.1. Section 21174 of the Public Resources Code is amended to read:

21174. No provision of this division is a limitation of restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer, including, but not limited to, the powers and authority granted to the California Coastal

Commission or any regional coastal commission pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code. To the extent of any inconsistency or conflict between the provisions of the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code, and the provisions of this division, the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code shall control.

SEC. 19.2. Nothing in Division 13 (commencing with Section 21000) of the Public Resources Code shall be construed to apply to any action or activity governed by Division 7 (commencing with Section 12501) of the Food and Agricultural Code. This section shall remain in effect only until July 1, 1978 and, as of such date is repealed. In enacting this section, the Legislature does not intend any comment upon the issues raised in Attorney General's Opinion No. 5075/16.

SEC. 19.3. The sum of four hundred three thousand fifty dollars ($403,050) is hereby appropriated from the General Fund in the State Treasury for expenditure during the 1977–1978 fiscal year in accordance with the following schedule:

(a) The sum of three hundred thirty-one thousand two hundred fifty dollars ($331,250) to the State Water Resources Control Board in support of the cost of meeting the various deadlines imposed by this act.

(b) The sum of twenty-five thousand dollars ($25,000) to the Department of Fish and Game in support of the cost of meeting the responsibilities imposed by this act.

(c) The sum of forty-six thousand eight hundred dollars ($46,800) to the Office of Planning and Research in support of the cost of meeting the responsibilities imposed by this act.

SEC. 20. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing

with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the purchase of equipment, fuel, steam, or power for such a powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located.

(c) In the event that a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead agency shall adopt a negative declaration to that effect.

SEC. 21. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic games.

(c) In the event that a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead

agency shall adopt a negative declaration to that effect.

SEC. 22. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the purchase of equipment, fuel, steam, or power for such a powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic games.

(c) In the event that a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead agency shall adopt a negative declaration to that effect.

SEC. 23. It is the intent of the Legislature that if this bill and Assembly Bill No. 1466 or Senate Bill No. 1040, or both, are chaptered and become effective on or before January 1, 1978, each of the bills amend Section 21080 of the Public Resources Code, and this bill is chaptered last, that amendments proposed by each of the bills which are chaptered be given effect as follows:

(1) If this bill and Assembly Bill No. 1466 are both chaptered and become effective January 1, 1978, both bills amend Section 21080 of the Public Resources Code, but Senate Bill No. 1040 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Assembly Bill No. 1466, the amendments proposed by both bills shall be given effect and incorporated in Section 21080 in the form set forth in Section 20 of this act. Therefore, if this bill and Assembly Bill No. 1466 are both chaptered and become effective January 1, 1978, both bills amend Section 21080, this bill is chaptered after Assembly Bill No. 1466, and Senate Bill No. 1040 is not chaptered or as chaptered does not amend that section, Section 20 of this act shall be operative and Sections 2, 21, and 22 of this act shall not become operative.

(2) If this bill and Senate Bill No. 1040 are both chaptered and become effective on or before January 1, 1978, both bills amend Section 21080 of the Public Resources Code, but Assembly Bill No. 1466 is not chaptered or as chaptered does not amend that section, and this bill is chaptered after Senate Bill No. 1040, Section 21080 of the Public Resources Code, as amended by Section 1 of Senate Bill No. 1040, shall be further amended on the effective date of this act in the form set forth in Section 21 of this act to incorporate the changes in Section 21080 proposed by this bill. Therefore, if this bill and Senate Bill No. 1040 are both chaptered and become effective on or before January 1, 1978, both bills amend Section 21080, this bill is chaptered after Senate Bill No. 1040, and Assembly Bill No. 1466 is not chaptered or as chaptered does not amend that section, Section 21 shall be operative and Sections 2, 20, and 22 of this act shall not become operative.

(3) If this bill and Assembly Bill No. 1466 and Senate Bill No. 1040 are all chaptered and become effective on or before January 1, 1978, all three bills amend Section 21080 of the Public Resources Code, and this bill is chaptered after Assembly Bill No. 1466 and Senate Bill No. 1040, Section 21080 of the Public Resources Code, as amended by Section 1 of Senate Bill No. 1040, shall be further amended on the effective date of this act in the form set forth in Section 22 of this act to incorporate the changes proposed by all three bills. Therefore, if this bill and Assembly Bill No. 1466 and Senate Bill No. 1040 are all chaptered and become effective on or before January 1, 1978, all three bills amend Section 21080 of the Public Resources Code, and this bill is chaptered after Assembly Bill No. 1466 and Senate Bill No. 1040, Section 22 of this act shall be operative and Sections 2, 20, and 21 of this act shall not become operative.

SEC. 24. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no new duties, obligations, or responsibilities imposed on local government by this act.

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CHAPTER 967

An act to add Sections 21068.5 and 21093 to, and to add and repeal Section 21151.6 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 20, 1983. Filed with Secretary of State September 21, 1983.]

The people of the State of California do enact as follows:

SECTION 1. Section 21068.5 is added to the Public Resources Code, to read:

21068.5. "Tiering" or "tier" means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

SEC. 2. Section 21093 is added to the Public Resources Code, to

read:

21093. (a) The Legislature finds and declares that tiering of environmental impact reports will promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project. The Legislature further finds and declares that tiering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports.

(b) To achieve this purpose, public agencies may tier environmental impact reports wherever possible.

SEC. 3. Section 21151.6 is added to the Public Resources Code, to read:

21151.6. (a) At the time that an application is received and accepted as complete by a local agency requiring a discretionary approval subject to this division, the agency shall determine whether or not it is able to meet the time limits specified in this chapter for assessing environmental impacts. If the local agency determines that it will be unable to meet those time limits with its existing staff resources, the agency shall, upon request of an applicant, contract with or employ qualified private entities or persons on a temporary basis to perform the services necessary to permit the agency to meet the time limits. In choosing the entity or person to perform the necessary services, the agency shall take into consideration the views of the applicant. The entity or person is solely responsible to the local agency. However, a local agency need not enter into a contract or employ persons if it determines that no entities or persons are available or qualified to perform the services.

(b) Entities or persons contracted with or employed by a local agency may, pursuant to an agreement with the local agency, perform functions necessary to meet the requirements of this division and shall not perform those functions reserved by this division or local ordinance to the decisionmaking body.

(c) A local agency may charge and may require the applicant to pay a fee in the amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) This section shall not be construed to affect any provision of this division which may require independent judgment of the lead agency.

(e) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date.

SEC. 4. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 571

An act to amend Sections 21108 and 21161 of the Public Resources Code, relating to environmental quality.

[Approved by Governor July 17, 1984. Filed with Secretary of State July 18, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 21108 of the Public Resources Code is amended to read:

21108. (a) Whenever a state agency, board, or commission approves or determines to carry out a project which is subject to this division, it shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall indicate

the determination of the agency, board, or commission whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

(b) Whenever a state agency, board, or commission determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out that project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of the determination with the Office of Planning and Research. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency, board, or commission responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency, board, or commission.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days.

SEC. 2. Section 21161 of the Public Resources Code is amended to read:

21161. Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

CHAPTER 1514

An act to amend Sections 21002.1, 21104, and 21153 of, and to add Sections 21001.1, 21005, 21081.5, 21082.2, 21092.1, 21094, 21166.1, 21167.6, 21167.8, and 21177 to, the Public Resources Code, relating to environmental control.

[Approved by Governor September 28, 1984. Filed with Secretary of State September 28, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 21001.1 is added to the Public Resources Code, to read:

21001.1. The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

SEC. 2. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

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(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so.

(c) In the event that economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, the project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a public agency which is functioning as a lead agency shall differ from that of a public agency which is functioning as a responsible agency. A public agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A public agency functioning as a responsible agency shall have responsibility for considering only the effects of those activities involved in a project, which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments the agency may wish to make pursuant to Section 21104 or 21153.

SEC. 3. Section 21005 is added to the Public Resources Code, to read:

21005. The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency or with substantive requirements of this division may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

The Legislature further finds and declares that in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

SEC. 5. Section 21081.5 is added to the Public Resources Code, to read:

21081.5. In making the findings required by subdivision (c) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

SEC. 6. Section 21082.2 is added to the Public Resources Code, to read:

21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record. The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence before the agency that the project may have a

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significant effect on the environment.

(b) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

SEC. 7. Section 21092.1 is added to the Public Resources Code, to read:

21092.1. When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

SEC. 8. Section 21094 is added to the Public Resources Code, to read:

21094. (a) Where a prior environmental impact report has been prepared for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section may examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency finds (1) is consistent with the previously approved program, plan, policy, or ordinance, (2) is consistent with any applicable local land use plan and zoning of the city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the agency in making the determinations and findings required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

SEC. 9. Section 21104 of the Public Resources Code is amended

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presented to the public agency orally or in writing by any person.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply when there was no public hearing or other opportunity for members of the public to raise objections prior to the approval of the project or when the public agency failed to give the notice required by law.

SEC. 14.5. It is the intent of the Legislature in adding Section 21177 to the Public Resources Code in Section 14 of this act to codify the exhaustion of administrative remedies doctrine. It is not the intent to limit or modify any exception to the doctrine of administrative remedies contained in case law.

SEC. 15. Section 9.5 of this bill incorporates amendments to Section 21104 of the Public Resources Code proposed by both this bill and AB 2411. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 21104 of the Public Resources Code, and (3) this bill is enacted after AB 2411, in which case Section 9 of this bill shall not become operative.

SEC. 16. Section 10.5 of this bill incorporates amendments to Section 21153 of the Public Resources Code proposed by both this bill and AB 2411. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 21153 of the Public Resources Code, and (3) this bill is enacted after AB 2411, in which case Section 10 of this bill shall not become operative.

SEC. 17. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 18. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

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CHAPTER 85

An act to add Section 21003.1 to the Public Resources Code, relating to environmental quality.

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[Approved by Governor June 19, 1985. Filed with Secretary of State June 19, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 21003.1 is added to the Public Resources Code, to read:

21003.1. The Legislature further finds and declares it is the policy of the state that:

(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

CHAPTER 1452

An act to amend Sections 1007, 1011, 1080, 1205, 1208, 1240, 1249, 4010, 8321, 8322, 10000, 10902, 12130, 14050, 14058, 18330, 18385, 18710, 18720, 18731, 18740, 18741, 18743, 18744, 18745, 18746, 18747, 18765, 19143, 19167, 19301, 19320, 19321, 19325, 19330, 19331, 19332, 19333, 19425, 19524, 19601, 19644, 19901, 22609, 33420, 35000, 35001, 35023, 35031, 35034, 35124, 35145, 35161, 35512, 35734, 37201, 39007, 39365.5, 39802, 39839, 39902, 41002, 41032, 41306, 41350, 41901, 41903, 42125, 42238.5, 42600, 42601, 42631, 42636, 42646, 42821, 44015, 44032, 44265, 44492, 44897, 44903.7, 44981, 45303, 46201, 46320, 46360, 48000, 48010,

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48200, 48205, 48980, 51210, 51833, 52001, 52035, 52500, 52857, 54004.7, 54301, 54659, 56027, 56100, 56101, 56129, 56156, 56156.5, 56157, 56159, 56170, 56172, 56194, 56200, 56220, 56240, 56242, 56300, 56301, 56302, 56322, 56328, 56340, 56341, 56342, 56344, 56345, 56345.5, 56360, 56361.5, 56363.3, 56363.5, 56364.5, 56365, 56365.5, 56366, 56366.1, 56366.5, 56369, 56380, 56450, 56451, 56454, 56456, 56500, 56601, 56602, 56606, 56700, 56760, 56761, 56824, 56825, 56826, 56851, 60241, 60242.5, 60246, 60285, 60660, and 60690 of, to amend the heading of Article 10 (commencing with Section 39480) of Chapter 3 of Part 23 of, to amend and renumber Sections 8480, 8481, 8482, 8483, 8485, 8486, 8490, 8491, 8492, 35104, 37227.6, 37228, 39118, 39119, 40005, 42637.5, 44882, 44883, and 48012 of, to add Sections 1278, 33319.5, 35160.1, 39304.5, 41002.5, 46307, 46307.1, and 51204.5 to, to add Article 2.7 (commencing with Section 44929.20) to Chapter 4 of Part 25 of, to add Chapter 10 (commencing with Section 49600) to Part 27 of, to repeal Sections 88, 1209, 1210, 1211, 1212, 1213, 1241, 1242, 1247, 1248, 1257, 1264, 1265, 1291, 1624, 1925, 1930, 1931, 2001, 2500, 2500.1, 2500.3, 2502, 2503, 2504, 2506, 2506.1, 2506.5, 2506.7, 2507, 2507.5, 2507.7, 2508, 2510, 2559, 5001, 5015, 5015.5, 5032, 5226, 5305, 5364, 5444, 8323, 8325, 10002, 10010, 10915, 14002.1, 14051, 14053, 16030, 16071, 18331, 18332, 18334, 18512, 18514, 18516, 18517, 18721, 18748, 18752, 19144, 19304, 19305, 19523, 19602, 19606, 19607, 19609, 19800, 23500, 23502, 23503, 23504, 23507, 23508, 23509, 23513, 23514, 23515, 23516, 23517, 23518, 23519, 23520, 23521, 23522, 23523, 23524, 23525, 23527, 23600, 23601, 23602, 23603, 23604, 23605, 23606, 23607, 23608, 23609, 23610, 23611, 23612, 23613, 23616, 24006, 24101, 35002, 35027, 35036, 35037, 35040, 35042, 35043, 35122, 35123, 35125, 35147, 35148, 35169, 35173, 35176, 35209, 35210, 35212, 35270, 35273, 35274, 35276, 35340, 37000.5, 37001, 37002, 37003, 37004, 37005, 37006, 37007, 37008, 37060, 37061, 37062, 37065, 37073, 37074, 37075, 37076, 37077, 37078, 37079, 37084, 37087, 37088, 37203, 37222, 37223, 37224, 37225, 37226, 37227, 37227.5, 37229, 37230, 37231, 37232, 37250, 37430, 39001, 39003, 39004, 39009, 39010, 39011, 39117, 39121, 39122, 39123, 39124, 39230.5, 39362, 39365, 39373, 39482, 39483, 39484, 39491, 39600, 39642, 39645, 39651, 39659, 39840.5, 40004, 40010, 40012, 40013, 41301.3, 41302, 41331, 41351, 41377, 41760, 42237.7, 42237.9, 42241, 42243.5, 42244.7, 42660, 42834, 44013, 44804, 44841, 44880, 44882, 44883, 44884, 44885, 44885.5, 44886, 44887, 44889, 44890, 44891, 44978.5, 45021, 45026, 45027, 45053, 45054, 45133, 46013.9, 46116, 46143, 46180.1, 46361, 46362, 46363, 46365, 46366, 46367, 48001, 48013, 48020, 48030, 48040, 48227, 48228, 48229, 48810, 49401, 49404, 49420, 49421, 49453, 49502, 51001, 51201, 51211, 51213, 51227, 51700, 51701, 51710, 51830, 51831, 51832, 52043, 52380, 52463, 54030, 54424, 54487, 56032, 60314, 60315, 60640, 60641, 60642, 60643, 60664, and 63002 of, to repeal the heading of Article 11 (commencing with Section 39490) of Chapter 3 of Part 23 of, to repeal Article 5 (commencing with Section 1110) of Chapter 2 of Part 2 of, Article 11 (commencing with Section 35300) of Chapter 2 of Part 21 of, Article 2 (commencing with Section 37020) of, Article 3 (commencing with Section 37040) of, Article 4 (commencing with Section 37050) of, and Article 6 (commencing

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with Section 37100) of, Chapter 1 of, Article 2 (commencing with Section 37210) of Chapter 2 of, and Article 2 (commencing with Section 37410) of Chapter 3 of, Part 22 of, Article 7 (commencing with Section 39240) of Chapter 2 of, Article 8 (commencing with Section 39440) of, Article 12 (commencing with Section 39500) of, and Article 16 (commencing with Section 39560) of, Chapter 3 of, and Article 3.5 (commencing with Section 39660) of Chapter 4 of, Part 23 of, Article 1 (commencing with Section 41700) of, Article 2 (commencing with Section 41730) of, Article 3 (commencing with Section 41750) of, and Article 7 (commencing with Section 41810) of, Chapter 5 of, Article 1 (commencing with Section 42200) of Chapter 7 of, and Article 3.5 (commencing with Section 42625) of Chapter 9 of, Part 24 of, Chapter 4 (commencing with Section 46500) of Part 26 of, and Article 3 (commencing with Section 48650) of Chapter 4 of, and Article 3 (commencing with Section 49440) of Chapter 9 of, Part 27 of, to repeal Chapter 9 (commencing with Section 2200) of Part 2 of, Chapter 4 (commencing with Section 10300) of Part 7 of, Chapter 14 (commencing with Section 23300) of Part 13 of, Chapter 2 (commencing with Section 41200) of, Chapter 5.5 (commencing with Section 42000) of, Chapter 5.7 (commencing with Section 42050) of, Chapter 8 (commencing with Section 42400) of, Chapter 8.5 (commencing with Section 42501) of, and Chapter 8.7 (commencing with Section 42521) of, Part 24 of, and to repeal and add Sections 37060, 37220 and 37221 of, and to repeal and add Article 2 (commencing with Section 35010) of Chapter 1 of Part 21 of, and Article 8.5 (commencing with Section 41835) of Chapter 5 of Part 24 of, the Education Code, to add Part 4 (commencing with Section 24000) to Division 14 of the Elections Code, to amend Sections 20330 and 53853 of the Government Code, to add Sections 20117, 20118, 20118.1, 20118.3, and 20118.4 to, and to add and repeal Section 20118.2 of, the Public Contract Code, to add Section 21151.2 to the Public Resources Code, and to add Article 28 (commencing with Section 960) to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to education.

[Approved by Governor September 30, 1987. Filed with Secretary of State September 30, 1987.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that, in 1972, the people of the state adopted an amendment to Section 14 of Article IX of the California Constitution, which permits the Legislature to authorize the governing boards of school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

It is the intent of the Legislature, in enacting this act, to implement more fully, for the school districts, county boards of education, and

and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 20111 or 20114, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

The governing board of any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year, may also authorize any change or alteration of a contract for reconstruction or rehabilitation work other than for the construction of new buildings or other new structures, where the cost of the change or alteration is in excess of the limitations in subdivisions (a) and (b) but does not exceed 25 percent of the original contract price, without the formality of securing bids, when such change or alteration is a necessary and integral part of the work under the contract and the taking of bids would delay the completion of the contract. Changes exceeding 15 percent of the original contract price shall be approved by an affirmative vote of not less than 75 percent of the members of the governing board.

SEC. 533. Section 21151.2 is added to the Public Resources Code, to read:

21151.2. To promote the safety of pupils and comprehensive community planning the governing board of each school district before acquiring title to property for a new school site or for an addition to a present school site, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received.

SEC. 534. Article 28 (commencing with Section 960) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 28. Adjustment Schools

960. This article shall be construed in conformity with the intent as well as the expressed provisions thereof, and the governing board of any adjustment school may do all those lawful acts that it deems

(f) Divulge evidence of unlawful activity discovered, pursuant to this article, from records or testimony not otherwise privileged or confidential, to the Attorney General or to any prosecuting attorney who has a responsibility for investigating the unlawful activity discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity discovered.

CHAPTER 626

An act to add Sections 21081.7 and 21092.4 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 21, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 21081.7 is added to the Public Resources Code, to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located when the project has impacts that are of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency shall adopt guidelines for the submittal of those reporting or monitoring programs.

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SEC. 2. Section 21092.4 is added to the Public Resources Code, to read:

21092.4. (a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 659

An act to add Section 21080.09 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1989. Filed with Secretary of State September 22, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 21080.09 is added to the Public Resources Code, to read:

21080.09. (a) For purposes of this section, the following definitions apply:

(1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.

(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.

(c) The approval of a project on a particular campus or medical center of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division.

CHAPTER 905

An act to amend Section 21082.1 of, and to add Section 21092.5 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 12, 1991. Filed with Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. (a) Section 21082.1 of the Public Resources Code is amended to read:

21082.1. (a) Any draft environmental impact report, environmental impact report, or negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, or negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents which reflect its independent judgment.

(3) As part of the adoption of a negative declaration or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

SEC. 2. Section 21092.5 is added to the Public Resources Code, to read:

21092.5. (a) At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for

responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.

(b) The lead agency shall notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared. If notice to the commenting public agency is provided pursuant to Section 21092, the notice shall satisfy the requirement of this subdivision.

(c) Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.

SEC. 3. The amendments to Section 21082.1 of the Public Resources Code made by this act, and the provisions of Section 21092.5 of the Public Resources Code, apply only to projects for which notice has not been provided pursuant to Section 21092 of the Public Resources Code as of January 1, 1992.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1183

An act to amend Sections 39003 and 39120 of the Education Code, to amend Section 65759 of, and to repeal and add Section 65850.2 of, the Government Code, to amend Sections 13143.9, 25534.1, 25535, 25538, 25541, 42301.6, and 42301.9 of, and to add Sections 25501.3, 25507.10, 25514.3, and 25534.2 to, the Health and Safety Code, and to amend Sections 21151.4 and 21151.8 of, and to repeal Section 21151.3 of, the Public Resources Code, relating to hazardous materials.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 39003 of the Education Code is amended to read:

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

(f) An applicant for a permit shall certify whether the proposed source or modification is located within 1,000 feet of a schoolsite. Misrepresentation of this fact may result in the denial of a permit.

(g) The notice requirements of this section shall not apply if the air pollution control officer determines that the application to construct or modify a source will result in a reduction or equivalent amount of air contaminants, as defined in Section 39013, or which are hazardous air emissions.

(h) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the state board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532.

SEC. 15. Section 42301.9 of the Health and Safety Code is amended to read:

42301.9. For the purposes of Sections 42301.4 to 42301.8, inclusive:

(a) "School" means any public or private school used for purposes of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(b) "Air contaminant" means any contaminant defined pursuant to Section 39013.

(c) "Administering agency" means an agency designated pursuant to Section 25502.

(d) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

SEC. 16. Section 21151.3 of the Public Resources Code is repealed.

SEC. 17. Section 21151.4 of the Public Resources Code is amended to read:

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within ¼ of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emission, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to

or greater than the quantity specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 18. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no such facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the

following conditions applies:

(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.

(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing

with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

SEC. 19. Sections 3, 5, 10, 10.5, 11, 14, 15, and 17 of this act shall not apply to projects for which an application is submitted pursuant to Section 65943 of the Government Code prior to January 1, 1992.

SEC. 20. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for those other costs.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 21. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1212

An act to amend Section 65962.5 of the Government Code, and to amend Section 21084 of, and to add Section 21092.6 to, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 65962.5 of the Government Code is amended to read:

65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to Section 25356 of the Health and Safety Code.

(5) All sites included in the Abandoned Site Assessment Program.

(b) The State Department of Health Services shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells which contain detectable levels of organic contaminants and which are subject to water analysis pursuant to Section 4026.2 or

4026.3 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, which concern the discharge of wastes which are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the California Integrated Waste Management Board, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The California Integrated Waste Management Board shall compile the local lists into a statewide list which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site which is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project

applicant is required to submit a signed statement which contains the following information:

Name of applicant:
Address:
Phone number:
Address of site (street name and number if available, and ZIP Code):
Local agency (city/county):
Assessor's book, page, and parcel number:
Specify any list pursuant to Section 65962.5 of the Government Code:
Regulatory identification number:
Date of list:

_____

Applicant, date

(g) The changes made to this section by the act amending this section, which takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

SEC. 2. Section 21084 of the Public Resources Code is amended to read:

21084. (a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.

(b) No project which may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.

(c) No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall be exempted from this division pursuant to subdivision (a).

(d) The changes made to this section by the act amending this section, which takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.

SEC. 3. Section 21092.6 is added to the Public Resources Code, to read:

21092.6. (a) The lead agency shall consult the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which

is included on any list. The lead agency shall indicate whether a site is on any list not already identified by the applicant. The lead agency shall specify the list and include the information in the statement required pursuant to subdivision (f) of Section 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The requirement in this section to specify any list shall not be construed to limit compliance with this division.

(b) If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency did not accurately specify or did not specify any list pursuant to subdivision (a), the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision.

(c) This section applies only to projects for which applications have not been deemed complete pursuant to Section 65943 of the Government Code on or before January 1, 1992.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 375

An act to amend Section 21083.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 7, 1993. Filed with Secretary of State September 8, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 21083.2 of the Public Resources Code is amended to read:

21083.2. (a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

(1) Planning construction to avoid archaeological sites.

(2) Deeding archaeological sites into permanent conservation easements.

(3) Capping or covering archaeological sites with a layer of soil before building on the sites.

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the

money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars ($200) per unit for any of the next 99 units.

(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.

(C) One hundred dollars ($100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific

research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(*l*) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

62350

CHAPTER 1130

An act to amend Sections 21003, 21080.1, 21080.3, 21080.7, 21081.6, 21087, 21090, 21091, 21092, 21092.3, 21100, 21151.5, 21152, 21167.1, 21167.4, 21167.6, and 21167.8 of, to add Section 21064.5 to, to add Chapter 4.5 (commencing with Section 21156) to Division 13 of, and to repeal Sections 21087.5, 21155, and 21168.3 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited as, the Dills, Allen, Sher California Environmental Quality Act Revision Act of 1993.

SEC. 2. Section 21003 of the Public Resources Code is amended to read:

21003. The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

SEC. 3. Section 21064.5 is added to the Public Resources Code, to read:

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

SEC. 4. Section 21080.1 of the Public Resources Code is amended to read:

21080.1. (a) The lead agency shall have the responsibility for determining whether an environmental impact report or a negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged, as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 5. Section 21080.3 of the Public Resources Code is amended to read:

21080.3. (a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency.

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies for a proposed project. In the case of a project described in

subdivision (c) of Section 21065, the request may also be made by the project applicant.

SEC. 6. Section 21080.7 of the Public Resources Code is amended to read:

21080.7. (a) No environmental impact report or negative declaration is required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:

(1) Finds, after giving notice pursuant to subdivision (c) or (d) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1, all of the following:

(A) The project is consistent with a comprehensive regulatory document which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20.

(B) For purposes of this section, the plan or program was adopted pursuant to the procedure established by Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code not more than five years prior to the finding made pursuant to this section.

(C) The plan or program has been the subject of an environmental impact report.

(D) The environmental impact report is sufficiently detailed so that the significant effects on the environment of the project and measures necessary to mitigate or avoid those effects can be determined, including any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance that exist in the area covered by the plan or program and measures necessary to mitigate or avoid those effects.

(2) Makes one or more of the findings as required pursuant to Section 21081.

(3) Files a notice of the decision on the proposed activity with the county clerk. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office of the county clerk. Each list shall remain posted for a period of 30 days.

(b) As used in this section:

(1) "Neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of the housing.

(2) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202 and 15203, and as periodically updated.

204940

SEC. 7. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. When making the findings required by subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(a) The public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

(b) If there is a project for which mitigation is adopted, a public agency shall comply with subdivision (a) by, among other things, adopting mitigation measures as conditions of project approval. Those conditions of project approval may be set forth in referenced documents which address required mitigation measures.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

(d) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

SEC. 8. Section 21087 of the Public Resources Code is amended to read:

21087. (a) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to

Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines shall not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(b) On or before July 1, 1995, the Office of Planning and Research shall recommend proposed changes and the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines pursuant to Section 21083 to reflect the changes to this division enacted during 1993.

SEC. 9. Section 21087.5 of the Public Resources Code is repealed.

SEC. 10. Section 21090 of the Public Resources Code is amended to read:

21090. For all purposes of this division, all public and private activities or undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan shall be conducted if any of the events specified in Section 21166 have occurred.

SEC. 11. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days.

(b) The public review period for a proposed negative declaration shall not be less than 20 days. If the proposed negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days.

(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report or a proposed negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d) (1) The lead agency shall consider any comments it receives on a draft environmental impact report or on a proposed negative declaration, which are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency

may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e) (1) Criteria for shorter review periods by the State Clearinghouse for documents which must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any comments that were received and considered pursuant to paragraph (1) of subdivision (d).

SEC. 12. Section 21092 of the Public Resources Code is amended to read:

21092. (a) Any lead agency which is preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant

effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

(2) This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or

operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 13. Section 21092.3 of the Public Resources Code is amended to read:

21092.3. The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

SEC. 14. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports. The environment impact report shall include a detailed statement setting forth the following:

(1) The significant effects on the environment of the proposed project.

(2) Any significant effects on the environment which cannot be avoided if the project is implemented.

(3) Any significant effects on the environment which would be irreversible if the project is implemented.

(4) Any growth-inducing impacts of the project.

(5) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(6) Alternatives to the proposed project.

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.

(b) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of

a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(c) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(d) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis. The cumulative impact analysis for an individual project shall not be required to consider a project for which information first becomes available after completion of the draft environmental impact report and could not otherwise have been reasonably anticipated, if the environmental impact report is certified within 150 days of the close of the public comment period.

SEC. 15. Section 21151.5 of the Public Resources Code is amended to read:

21151.5. (a) Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the local agency is the lead agency for a project. These ordinances or resolutions may establish different time limits for different types or classes of projects and different types of environmental impact reports, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution.

(b) The ordinances or resolutions required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(c) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a public agency, the contract shall be executed within 45 days from the date on which an application requesting approval of the project is received and accepted as complete by the local agency.

SEC. 16. Section 21152 of the Public Resources Code is amended to read:

21152. (a) Whenever a local lead agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the

project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local lead agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local lead agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local lead agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than nine months.

SEC. 17. Section 21155 of the Public Resources Code is repealed.

SEC. 18. Chapter 4.5 (commencing with Section 21156) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.5. STREAMLINED ENVIRONMENTAL REVIEW

Article 1. Findings

21156. It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

Article 2. Master Environmental Impact Report

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific

plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects to be carried out pursuant to a development agreement.

(5) Public and private projects pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

21157.1. The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed

subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

21157.5. (a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

21157.6. The master environmental impact report shall not be used for the purposes of this chapter if the certification occurred more than five years prior to the filing of an application for a subsequent project unless the lead agency reviews the adequacy of the master environmental impact report and does either of the

following:

(a) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(b) Certifies a subsequent or supplemental environmental impact report which has been either incorporated into the previously certified master environmental impact or references any deletions, additions, or any other modifications to the previously certified environmental impact report.

21157.7. If a later approved project, which was not identified by the lead agency in a certified master environmental impact report as an anticipated subsequent project and was not analyzed in the master environmental impact report's cumulative impacts analysis, makes substantial changes with respect to the circumstances under which the master environmental impact report was certified or provides new information, which was not known and could not have been known at the time that the master environmental impact report was certified, the lead agency shall do one of the following:

(a) Consistent with the requirements of Section 21157.6, prepare a subsequent or supplemental environmental impact report that updates or revises the certified master environmental impact report to include a description of any additional anticipated subsequent projects as being within the scope of the report.

(b) If any new significant effect on the environment of a subsequent project that is described in the certified master environmental impact report as being within the scope of the report can be avoided or mitigated to a point where no significant effect on the environment of a subsequent project that is described in the certified master environmental impact report as being within the scope of the report will occur and no project specific effects mandate the preparation of a focused environmental impact report, prepare a mitigated negative declaration consistent with Section 21157.5 for the subsequent project.

(c) Prepare a focused environmental impact report consistent with Section 21158 for all subsequent projects described in the certified master environmental impact report as being within the scope of the report.

Article 3. Focused Environmental Impact Report

21158. (a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects

on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to subdivision (b) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

21158.5. (a) Where a project consists of multiple-family residential development of not more than 100 units or a residential and commercial or retail mixed-use development of not more than 100,000 square feet which complies with all of the following, a focused environmental impact report shall be prepared, notwithstanding that the project was not identified in a master environmental impact report:

(1) Is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an environmental impact report

was prepared within five years of the certification of the focused environmental impact report.

(2) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(3) Meets one or more of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed has been previously developed with urban uses.

(C) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

Article 4.1. Expedited Environmental Review for Environmentally Mandated Projects

21159.1. (a) A focused environmental impact report may be utilized if a project meets all of the following requirements:

(1) The project consists solely of the installation of pollution control equipment required by a rule or regulation of an agency listed in Section 21159.4 and other components necessary to complete the installation of that equipment.

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project which were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. No discussion of growth-inducing impacts or cumulative impacts shall be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule

or regulation.

21159.2. (a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, utilize the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division. The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

21159.3. In the preparation of any environmental impact report pursuant to Section 21159.1 or 21159.2, the following deadlines shall apply:

(a) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(b) If the environmental impact report will be prepared under contract to the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the environmental impact report as soon as it has enough information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

21159.4. This article shall only apply to the State Air Resources Board, a district, as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

Article 5. Public Assistance Program

21159.9. On or before March 1, 1994, the Office of Planning and Research shall implement, utilizing existing resources, a public

assistance and information program, to ensure efficient and effective implementation of this division, to do both of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish a data base to assist in the preparation of environmental documents.

SEC. 19. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of the action or proceeding on appeal from the decision of a lower court, all courts wherein the action or proceeding is, or may hereafter be, pending shall give the action or proceeding preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) In order to ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

SEC. 20. Section 21167.4 of the Public Resources Code is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties within 14 calendar days of filing the request for a hearing.

SEC. 21. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the petition, shall be served upon the public agency not later than 10 business days after the action is filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days after the request specified in subdivision (a) is served upon the public agency. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit prescribed by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit prescribed in subdivision (b), or any continuances of that time limit, the petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days after the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, if the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(f) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(g) At the completion of the filing of briefs, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 22. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days after service upon a public agency of a petition or complaint brought to pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not

later than 45 days after the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) The petitioner or plaintiff shall serve a presettlement statement by mail on all parties not less than five days in advance of the meeting. The statement shall include, but not be limited to, all of the following:

(1) A concise description of the case, including a brief procedural history, and all the facts material to a consideration of the issues presented by the litigation.

(2) The anticipated issues to be raised in the litigation. Counsel shall confer with their clients in advance regarding settlement and shall be prepared to negotiate a settlement whenever reasonably possible.

(3) An offer of the position for which the petitioner or plaintiff would settle, which may consist of the petitioner's prayer.

(c) At the time and place specified in the notice filed with the court, the parties shall meet and attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(d) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(e) After the settlement procedure is completed, the parties shall jointly prepare, sign, and file a settlement statement with the court, including, but not limited to, all of the following:

(1) The legal and factual contentions raised by each party.

(2) The contentions that were settled or otherwise agreed upon and the nature of that agreement.

(3) The efforts made by each party to settle the unresolved issues.

(4) The list of participants in the settlement proceedings.

(f) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(g) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court. The failure of the petitioner or plaintiff to participate in that process, without good cause, shall result in dismissal with prejudice of the action or proceeding.

205410

SEC. 23. Section 21168.3 of the Public Resources Code is repealed.

SEC. 24. This act shall become operative only if Senate Bill 919 of the 1993–94 Regular Session of the Legislature is enacted and takes effect.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: SB 919 CHAPTERED 10/11/93

CHAPTER 1131
FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
APPROVED BY GOVERNOR OCTOBER 10, 1993
PASSED THE SENATE SEPTEMBER 11, 1993
PASSED THE ASSEMBLY SEPTEMBER 10, 1993
AMENDED IN ASSEMBLY SEPTEMBER 9, 1993
AMENDED IN ASSEMBLY AUGUST 16, 1993
AMENDED IN ASSEMBLY JUNE 22, 1993
AMENDED IN SENATE MAY 17, 1993
AMENDED IN SENATE APRIL 28, 1993

INTRODUCED BY Senator Dills

MARCH 4, 1993

An act to amend Section 65941 of the Government Code, to amend Section 42302.1 of the Health and Safety Code, and to amend Sections 21080, 21081, 21082.2, 21168.9, and 21177 of, and to add Article 4 (commencing with Section 21159) to Chapter 4.5 of Division 13 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 919, Dills. Environmental quality.

(1) Existing law, the California Environmental Quality Act, requires a lead agency, as defined, to prepare an environmental impact report on any project which it proposes to carry out or approve that may have a significant effect on the environment, with specified exemptions.

This bill would exempt from the act a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district makes specified findings. The bill would impose a state-mandated local program by imposing new duties on local agencies with regard to determining the applicability of, and giving notice of, the exemption.

The bill would require an environmental impact report to be prepared if there is substantial evidence, as defined, in light of the whole record before the agency that the project may have a significant effect on the environment, and would prescribe related matters.

(2) The act prohibits a public agency from carrying out or approving a project for which an environmental impact report has been completed which identifies one or more significant effects on the environment unless the agency makes one or more of specified findings, which may include a finding that specific economic, social, or other considerations make infeasible the mitigation measures or alternatives identified in the environmental impact report.

This bill would include legal and technological considerations and provide that those considerations include considerations for the provision of employment opportunities for highly trained workers.

(3) The act requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in the record, and requires a court, in an action or proceeding challenging an action of a public agency on the grounds of noncompliance with the act, to determine whether the action of the agency is supported by substantial evidence in light of the whole record. State guidelines adopted by the Secretary of the Resources Agency to implement the act

require the preparation of an environmental impact report if it can be fairly argued on the basis of substantial evidence that the proposed project may have a significant effect on the environment.

This bill would require the lead agency to make its determination based on substantial evidence in light of the whole record, as specified.

The bill would require the court to make a specified finding before issuing an order requiring a public agency or real party in interest to suspend activity relating to a project in an action or proceeding under the act, as specified. The bill would prohibit the bringing of an action or proceeding under the act unless the alleged grounds for noncompliance with the act were presented to the public agency, and unless the person bringing the action or proceeding objected during the public comment period, or prior to the close of the public hearing on the project.

(4) Existing law prohibits a lead agency under the act, in establishing criteria for the completeness of an application for a development project, from requiring the informational equivalent of an environmental impact report as a prerequisite for completeness of the application.

This bill would also apply that prohibition to a responsible agency, and would prohibit the lead or responsible agency from otherwise requiring proof of compliance with the act as such a prerequisite. The bill would require a responsibe agency, at the request of the applicant, to commence processing the permit application prior to final action by the lead agency, to the extent that necessary information is available, thereby imposing a state-mandated local program.

(5) The bill would require certain state agencies to perform an environmental analysis containing specified information at the time of adopting a specified rule or regulation, performance standard, or treatment requirement.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) The bill would become operative only if AB 1888 is enacted and takes effect.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time

of the issuance of a permit, of any such exemption by mail to any person who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 42302.1 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light of the whole record before the hearing board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a), the permit shall be revoked. If there is no such substantial evidence, the exemption shall be upheld and there shall be no further compliance with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of the hearing board.

(d) On or before December 31, 1995, the Resources Agency shall prepare and submit to the Legislature and the Governor a study on the exemption established pursuant to this section in order to determine the advisability of expanding this exemption to include other industrial facilities. The study shall identify the potential benefits and adverse impacts on the environment from an expansion of the exemption and shall determine the potential benefits and adverse impacts on public participation in such an exemption process.

SEC. 2. Section 65941 of the Government Code is amended to read:

65941. (a) The information compiled pursuant to Section 65940 shall also indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project.

(b) If a public agency is a lead or responsible agency for purposes of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, that criteria shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with that act as a prerequisite to a permit application being deemed complete. However, that criteria may require sufficient information to permit the agency to make the determination required by Section 21080.1 of the Public Resources Code.

(c) Consistent with this chapter, a responsible agency shall, at the request of the applicant, commence processing a permit application for a development project prior to final action on the project by a lead agency to the extent that the information necessary to commence the processing is available. For purposes of this subdivision, "lead agency" and "responsible agency" shall have the same meaning as those terms are defined in Section 21067 of the Public Resources Code and Section 21069 of the Public Resources Code, respectively.

SEC. 3. Section 42302.1 of the Health and Safety Code is amended to read:

42302.1. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, or within 10 days after mailing of the notice of issuance of the permit to any person who has requested notice or within 10 days of the publication and mailing of notice provided for in Section 1 of the act amending this section in the 1993 Regular Session of the

Legislature, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Except as provided in Section 1 of the act amending this section in the 1993 Regular Session of the Legislature, within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

SEC. 5. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record

of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, does not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence in light of the whole record before the lead agency that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

SEC. 6. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the

environment that would occur if the project is approved or carried out unless the public agency makes one or more of the following findings:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(b) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(c) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

SEC. 7. Section 21082.2 of the Public Resources Code is amended to read:

21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

SEC. 8. Article 4 (commencing with Section 21159) is added to Chapter 4.5 of Division 13 of the Public Resources Code, to read:

Article 4. Expedited Environmental Review for Environmentally Mandated Projects

21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include, all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical

factors, population and geographic areas, and specific sites.
(d) Nothing in this section shall require the agency to conduct a project level analysis.
(e) For purposes of this article, the term "performance standard" includes process or raw material changes or product reformulation.
(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.
21159.4. This article shall apply to the following agencies: the State Air Resources Board, any district as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.
SEC. 9. Section 21168.9 of the Public Resources Code is amended to read:
21168.9. (a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:
(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.
(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.
(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.
(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

SEC. 10. Section 21177 of the Public Resources Code is amended to read:
21177. (a) No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 12. This act shall become operative only if Assembly Bill 1888 is enacted and takes effect.

BILL NUMBER: SB 517 CHAPTERED 07/21/94

CHAPTER 300
FILED WITH SECRETARY OF STATE JULY 21, 1994
APPROVED BY GOVERNOR JULY 20, 1994
PASSED THE SENATE JULY 7, 1994
PASSED THE ASSEMBLY JULY 2, 1994
AMENDED IN ASSEMBLY JUNE 14, 1994
AMENDED IN ASSEMBLY MAY 4, 1994
AMENDED IN ASSEMBLY APRIL 5, 1994
AMENDED IN ASSEMBLY MARCH 17, 1994
AMENDED IN SENATE JUNE 23, 1993
AMENDED IN SENATE MAY 17, 1993
AMENDED IN SENATE MAY 10, 1993
AMENDED IN SENATE APRIL 12, 1993

INTRODUCED BY Senator Bergeson
(Coauthor: Senator Russell)
(Coauthor: Assembly Member Napolitano)

MARCH 1, 1993

An act to add Chapter 9.3 (commencing with Section 66030) to Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 517, Bergeson. Land use: mediation and resolution of land use disputes.

Existing law contains numerous provisions relating to the use of land, including provisions authorizing the bringing of actions in the superior court relating to land use disputes.

This bill would express specified findings and declarations of the Legislature relating to litigation arising out of land use disputes, and would also express legislative intent in this regard, including a statement that it is not the intent of the Legislature to interfere with litigants' ability to pursue court remedies. The bill would provide that specified land use actions brought in superior court may be subject to a mediation proceeding, as specified, conducted by the council of governments having jurisdiction in the county where the dispute arose, the Office of Permit Assistance within the Trade and Commerce Agency, or other specified persons or entities. The bill would establish procedures for initiating the mediation process, and for selecting a mediator. The bill would prescribe the reports and statements to be filed by the mediator, as specified, and would provide that specified Evidence Code sections apply to mediations conducted pursuant to the bill's provisions. It would also authorize the Judicial Council or courts to adopt rules, forms, and standards as necessary to implement the chapter.

This bill would require the Office of Permit Assistance, in cooperation with the Judicial Council, to report to the Legislature regarding implementation of the mediation program.

The bill would provide that no action filed on or after January 1, 2002, shall be subject to its provisions, unless a later enacted statute, enacted before January 1, 2002, extends that date or deletes the section.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 9.3 (commencing with Section 66030) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND USE DISPUTES

66030. (a) The Legislature finds and declares all of the following:

(1) Current law provides that aggrieved agencies, project proponents, and affected residents may bring suit against the land use decisions of state and local governmental agencies. In practical terms, nearly anyone can sue once a project has been approved.

(2) Contention often arises over projects involving local general plans and zoning, redevelopment plans, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), development impact fees, annexations and incorporations, and the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).

(3) When a public agency approves a development project that is not in accordance with the law, or when the prerogative to bring suit is abused, lawsuits can delay development, add uncertainty and cost to the development process, make housing more expensive, and damage California's competitiveness. This litigation begins in the superior court, and often progresses on appeal to the Court of Appeal and the Supreme Court, adding to the workload of the state's already overburdened judicial system.

(b) It is, therefore, the intent of the Legislature to help litigants resolve their differences by establishing formal mediation processes for land use disputes. In establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an

organization or agency to provide a mediator.
(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:
(1) The council of governments having jurisdiction in the county where the dispute arose.
(2) Any subregional or countywide council of governments in the county where the dispute arose.
(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.
(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.
(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.
66032. (a) Notwithstanding any provision of law to the contrary, all time limits with respect to an action shall be tolled while the mediator conducts the mediation, pursuant to this chapter.
(b) Mediations conducted by a mediator pursuant to this chapter that involve less than a quorum of a legislative body or a state body shall not be considered meetings of a legislative body pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), nor shall they be considered meetings of a state body pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).
(c) Any action taken regarding mediation conducted pursuant to this chapter shall be taken in accordance with the provisions of current law.
(d) Ninety days after the commencement of the mediation, and every 90 days thereafter, the action shall be reactivated unless the parties to the action do either of the following:
(1) Arrive at a settlement and implement it in accordance with the provisions of current law.
(2) Agree by written stipulation to extend the mediation for an another 90-day period.
(e) A mediator shall not file, and a court shall not consider, any declaration or finding of any kind by the mediator, other than a required statement of agreement or nonagreement, unless all parties in the mediation expressly agree otherwise, in writing.
(f) Sections 703.5 and 1152.5 of the Evidence Code shall apply to any mediation conducted pursuant to this chapter.
66033. (a) At the end of the mediation, the mediator shall file a report with the Office of Permit Assistance, consistent with Section 1152.5 of the Evidence Code, containing each of the following:
(1) The title of the action.
(2) The names of the parties to the action.
(3) An estimate of the costs avoided, if any, because the parties used mediation instead of litigation to resolve their dispute.
(b) The sole purpose of the report required by this section is the collection of information needed by the office to prepare its report to the Legislature pursuant to Section 66036.

66034. If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

66035. The Judicial Council may adopt rules, forms, and standards necessary to implement this chapter.

66036. By January 1, 2001, the Office of Permit Assistance within the Trade and Commerce Agency, in cooperation with the Judicial Council, shall report to the Legislature regarding the implementation of this chapter. The office shall consult with persons and interest groups with knowledge of the mediation process, and affected public agencies, including, but not limited to, councils of governments. The report may recommend the extension of the chapter, changes to the chapter, or the repeal of the chapter.

66037. No action filed on or after January 1, 2002, shall be subject to this chapter unless a later enacted statute which is chaptered before January 1, 2002, extends this date or deletes this section.

CHAPTER 1230

An act to amend Sections 21002.1, 21005, 21064.5, 21065, 21080, 21080.1, 21081.6, 21100, 21100.1, and 21167.6 of, and to add Section 21080.14 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

The people of the State of California do enact as follows:

SECTION 1. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at

the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

SEC. 2. Section 21005 of the Public Resources Code is amended to read:

21005. (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

SEC. 3. Section 21064.5 of the Public Resources Code is amended to read:

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or

mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

SEC. 4. Section 21065 of the Public Resources Code is amended to read:

21065. "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

SEC. 5. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory

program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written

documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence in light of the whole record before the lead agency that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set

aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

SEC. 6. Section 21080.1 of the Public Resources Code is amended to read:

21080.1. (a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 7. Section 21080.14 is added to the Public Resources Code, to read:

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan as it existed on the date the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the

date the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than two acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants must be removed or any significant effects of those contaminants must be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

SEC. 8. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project, or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the

project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) If there is a project for which mitigation is adopted, a public agency shall comply with subdivision (a) by, among other things, adopting mitigation measures as conditions of project approval. Those conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 8.5. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply: (1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the

project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 9. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be

avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 10. Section 21100.1 of the Public Resources Code is amended to read:

21100.1. The information described in subparagraph (B) of paragraph (2) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

SEC. 11. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of

proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency which were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

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(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, which have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the

appeal for hearing on the first available calendar date.

SEC. 12. (a) In the next scheduled review of the guidelines pursuant to Section 21087 of the Public Resources Code, the Office of Planning and Research shall (1) review the impact of Article 3 (commencing with Section 21158) of Chapter 4.5 of Division 13 of the Public Resources Code and provide further development of the concept of using a focused environmental impact report, and (2) provide recommendations for revising the definition of "project" in the guidelines to conform to Section 21065 of the Public Resources Code, as amended by Section 4 of this act.

(b) The Legislature hereby declares that the amendment of Section 21065 of the Public Resources Code by Section 4 of this act is intended to clarify the definition of "project" as currently set forth in subdivision (a) of Section 15378 of Title 14 of the California Code of Regulations, as adopted by the Secretary of the Resources Agency. The primary purpose of the change is to codify the holdings of Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District (1992), 9 Cal. App. 4th 464, and City of Livermore v. Local Agency Formation Com. (1986), 184 Cal. App. 3d 531.

SEC. 13. (a) The Office of Planning and Research may include in its annual survey questions relating to the impact of the exemption to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of residential housing that is provided pursuant to Section 21080.14 of the Public Resources Code, as added by Section 7 of this act, on lead agencies that are considering the approval of housing development projects that are intended for lower income households or that are affordable to low- and moderate-income households.

(b) It is the intent of the Legislature that the survey questions shall include an analysis of the ability of the lead agency to address potential significant effects on the environment that may result from the proposed development project, including the conversion of agricultural lands to urban uses, to impose conditions on the construction of the proposed development project, and to shorten the amount of time within which the proposed development project may be considered and acted upon.

SEC. 14. If this bill and AB 314 are both chaptered, the provisions of this bill that amend Sections 21100, 21100.1, and 21167.6 of the Public Resources Code shall prevail over the provisions of AB 314 that amend those sections of the Public Resources Code regardless of which bill is chaptered last.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with

Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. The changes to subdivision (e) of Section 21100 of the Public Resources Code made by this bill shall not become operative until January 1, 1995.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 21080.6 of the Public Resources Code proposed by this bill and AB 314. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21080.6 of the Public Resources Code, and (3) this bill is enacted after AB 314, in which case Section 21080.6 of the Public Resources Code, as amended by AB 314, shall remain operative only until the operative date of this bill, at which time Section 8.5 of this bill shall become operative, and Section 8 of this bill shall not become operative.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, as soon as possible, the efficient review of projects subject to the California Environmental Quality Act, thereby protecting the environment and improving the economy of the state, it is necessary that this act take effect immediately.

CHAPTER 1294

An act to amend Section 66474.01 of the Government Code, to amend Sections 21081, 21081.5, 21081.6, 21087, 21094, 21100, 21100.1, 21100.2, 21151.5, 21152, 21157, 21157.1, 21157.6, 21158, 21167, 21167.1, 21167.4, 21167.6, and 21167.8, of, to repeal Sections 21157.7 and 21159.4 of, and to repeal the heading of Article 4.1 (commencing with Section 21159.1) of Chapter 4.5 of Division 13 of, the Public Resources Code, and to amend Section 13264 of the Water Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State October 4, 1994.

The people of the State of California do enact as follows:

SECTION 1. Section 66474.01 of the Government Code is amended to read:

66474.01. Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

SEC. 2. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

SEC. 3. Section 21081.5 of the Public Resources Code is amended to read:

21081.5. In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

SEC. 4. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(a) The public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected

by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

(d) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

SEC. 4.5. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency

having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 5. Section 21087 of the Public Resources Code is amended to read:

21087. (a) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines shall not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(b) Within six months of the enactment of AB 314 of the 1993–94 Regular Session of the Legislature, the Office of Planning and Research shall recommend proposed changes and the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines pursuant to Section 21083 to reflect the changes to this division enacted during the 1993–94 Regular Session of the Legislature.

SEC. 6. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study

shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

SEC. 7. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) The significant effects on the environment of the proposed project.

(2) Any significant effect on the environment that cannot be avoided if the project is implemented.

(3) Any significant effect on the environment that would be irreversible if the project is implemented.

(4) Any growth-inducing impact of the project.

(5) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(6) Alternatives to the proposed project.

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions that exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 8. Section 21100.1 of the Public Resources Code is amended to read:

21100.1. The information described in paragraphs (3) and (7) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for the preparation of an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

SEC. 9. Section 21100.2 of the Public Resources Code is amended to read:

21100.2. (a) Each state agency shall establish, by resolution or order, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing and approving negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations. The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a state agency, the contract shall be executed within 45 days from the date on which the state agency determines that a negative declaration or an environmental impact report is required. The state agency may take longer to execute the contract in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 10. Section 21151.5 of the Public Resources Code is amended to read:

21151.5. (a) Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the local agency is the lead agency for a project. These ordinances or resolutions may establish different

time limits for different types or classes of projects and different types of environmental impact reports, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution. The ordinances or resolutions required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a local agency, the contract shall be executed within 45 days from the date on which the local agency determines that a negative declaration or an environmental impact report is required. The local agency may take longer to execute the contract in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 11. Section 21152 of the Public Resources Code is amended to read:

21152. (a) Whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in

the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than nine months.

SEC. 12. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects to be carried out pursuant to a development agreement.

(5) Public and private projects pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact

report.

SEC. 12.5. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact

report.

SEC. 13. Section 21157.1 of the Public Resources Code is amended to read:

21157.1. The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

SEC. 14. Section 21157.6 of the Public Resources Code is amended to read:

21157.6. The master environmental impact report shall not be used for the purposes of this chapter if (1) the certification of the report occurred more than five years prior to the filing of an application for the subsequent project, or (2) if the approval of a project that was not described in the report may affect the adequacy of the environmental review in the report for any subsequent

project, unless the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(a) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(b) Certifies a subsequent or supplemental environmental impact report which has been either incorporated into the previously certified master environmental impact report or references any deletions, additions, or any other modifications to the previously certified master environmental impact report.

SEC. 15. Section 21157.7 of the Public Resources Code is repealed.

SEC. 16. Section 21158 of the Public Resources Code is amended to read:

21158. (a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to paragraph (2) of subdivision (a) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that

mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

SEC. 17. The heading of Article 4.1 (commencing with Section 21159.1) of Chapter 4.5 of Division 13 of the Public Resources Code is repealed.

SEC. 18. Section 21159.4 of the Public Resources Code, as added by Chapter 1130 of the Statutes of 1993, is repealed.

SEC. 19. Section 21167 of the Public Resources Code is amended to read:

21167. Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by

subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 within the posting periods specified in Sections 21108 and 21152, the time periods specified in subdivisions (b), (c), (d), and (e) shall commence from the date that the public agency deposits a written copy of the notice in the United States mail, first-class postage prepaid.

SEC. 20. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) To ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

(c) In any action or proceeding filed pursuant to this chapter that is joined with any other cause of action, the court, upon a motion by any party, may grant severance of the actions. In determining whether to grant severance, the court shall consider such as matters judicial economy, administrative economy, and prejudice to any party.

SEC. 21. Section 21167.4 of the Public Resources Code is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90

days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

SEC. 22. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following procedures shall apply:

(a) At the time that the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the petition, shall be served upon the public agency not later than 10 business days from the date upon which the action or proceeding is filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date upon which the request specified in subdivision (a) is served upon the public agency. Upon certification, the public agency shall lodge with the court a copy of the record and shall serve on all parties notice that the record of proceedings has been certified and lodged. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit prescribed by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the

court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit prescribed in subdivision (b), or any continuances of that time limit, the petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date upon which the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, if the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(f) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(g) At the completion of the filing of briefs on appeal, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 23. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be

conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, each party shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

SEC. 24. Section 13264 of the Water Code is amended to read:

13264. (a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 120 days after compliance with Section 13260 if any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The regional board's waiver pursuant to Section 13269.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting any

person who is violating or threatening to violate this section from doing any of the following, whichever is applicable:

(1) Discharging the waste or fluid.

(2) Making any material change in the discharge.

(3) Constructing the injection well.

SEC. 25. The changes to subdivision (e) of Section 21100 of the Public Resources Code made by this act shall not become operative until January 1, 1995.

SEC. 26. If this bill and SB 749 are both chaptered, the provisions of SB 749 that amend Sections 21100, 21100.1, and 21167.6 of the Public Resources Code shall become operative, and the provisions of this bill that amend those sections shall not become operative, regardless of which bill is chaptered last.

SEC. 27. Section 4.5 of this bill incorporates amendments to Section 21080.6 of the Public Resources Code proposed by this bill and SB 749. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21080.6 of the Public Resources Code, and (3) this bill is enacted after SB 749, in which case Section 21080.6 of the Public Resources Code, as amended by SB 749, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 28. Section 12.5 of this bill incorporates amendments to Section 21157 of the Public Resources proposed by this bill and SB 1971. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21157 of the Public Resources Code, and (3) this bill is enacted after SB 1971, in which case Section 21157 of the Public Resources Code, as amended by SB 1971, shall remain operative only until the operative date of this bill, at which time Section 12.5 of this bill shall become operative, and Section 12 of this bill shall not become operative.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that technical corrections, to ensure proper implementation of Chapter 1130 of the Statutes of 1993 are made in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 801

An act to amend Sections 21167 and 21167.8 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

The people of the State of California do enact as follows:

SECTION 1. Section 21167 of the Public Resources Code is amended to read:

21167. Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first-class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

SEC. 2. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

BILL NUMBER: SB 1562 CHAPTERED 07/25/96

CHAPTER 277
FILED WITH SECRETARY OF STATE JULY 25, 1996
APPROVED BY GOVERNOR JULY 24, 1996
PASSED THE ASSEMBLY JULY 11, 1996
PASSED THE SENATE APRIL 25, 1996
AMENDED IN SENATE APRIL 18, 1996

INTRODUCED BY Senator Greene

FEBRUARY 15, 1996

An act to add Part 10.5 (commencing with Section 17211) and Part 23 (commencing with Section 38000) to, to repeal and add Part 10 (commencing with Section 15100) of, and to repeal Part 10.5 (commencing with Section 17900) and Part 23 (commencing with Section 39001) of, the Education Code, and to repeal Sections 53080, 53080.1, 53080.15, 53080.2, 53080.3, 53080.4, 53080.6, and 53081 of the Government Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1562, Greene. School facilities.

(1) Existing law includes various state general obligation bond acts, as approved by the voters, that provide for the issuance of bonds to raise revenues for, among other purposes, elementary and secondary school facility construction.

This bill would repeal and reenact the provisions governing state school bonds including the State School Building Aid Law of 1949, the State School Building Aid Law of 1952, the State School Construction Law of 1957, and the Urban School Construction Aid Law of 1968.

(2) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funding for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities.

This bill would repeal and reenact this law and would make technical, nonsubstantive changes in those provisions.

(3) Existing law also provides for the Emergency School Classroom Law of 1979, school district revenue bonds, the Archie-Hudson and Cunneen School Technology Revenue Bond Act, and the California School Finance Authority.

This bill would repeal and reenact those bodies of law and would make technical, nonsubstantive changes in those provisions.

(4) Existing law sets forth specific requirements for the location and construction of school buildings including, among other provisions, the Field Act.

This bill would repeal and reenact those provisions and would make technical, nonsubstantive changes in those provisions.

(5) Under existing law, the governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the school district for the purpose of funding the construction or reconstruction of school facilities.

This bill would repeal and add those provisions and would make technical, nonsubstantive changes in those provisions.

(6) This bill would provide that it is to be construed as a restatement and not as a new enactment.
(7) This bill would provide that the above-referenced provisions of the bill would become operative on January 1, 1998.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 10 (commencing with Section 15100) of the Education Code is repealed.
SEC. 2. Part 10 (commencing with Section 15100) is added to the Education Code, to read:

PART 10. SCHOOL BONDS
CHAPTER 1. BONDS OF SCHOOL DISTRICTS AND COMMUNITY COLLEGE DISTRICTS
Article 1. Purposes for Authorizing Bonds

15100. Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order the county superintendent of schools to call an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:
(a) The purchasing of school lots.
(b) The building or purchasing of school buildings.
(c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.
(d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.
(e) The supplying of school buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature.
(f) The permanent improvement of the school grounds.
(g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 17577 or 81613.
(i) The purchase of schoolbuses the useful life of which is at least 20 years.
(j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.
Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition.
15101. Notwithstanding any provision of law to the contrary, no election shall be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code.
15102. The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the district as shown by the last

CHAPTER 12. STATE SCHOOL BUILDING LEASE-PURCHASE LAW OF 1976
Article 1. General Provisions

17000. This chapter may be cited as the "Leroy F. Greene State School Building Lease-Purchase Law of 1976."

17001. (a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

(b) In order to expedite the elimination of the use of nonconforming school buildings that are used or designed to be used for instructional purposes or intended to be entered by pupils, the State Allocation Board may establish criteria that considers special circumstances under which funds may be allocated for the reconstruction of nonconforming buildings. The funds allocated in accordance with this section shall not exceed 75 percent of the cost of facility replacement.

(c) It is the intent of the Legislature that all construction projects be designed and constructed to maximize the use of educational technology, as set forth in subdivision (b) of Section 17002.

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Board" means the State Allocation Board.

(b) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(c) The term "lease" includes a lease with an option to purchase.

(d) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(e) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

(f) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

17002.1. As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of

of the information certified by self-certifying districts pursuant to subdivision (b), using generally accepted auditing principles, at any time to ensure compliance with the law.

(d) If any information certified by a self-certifying district pursuant to subdivision (b) is found by the department to contain any material inaccuracy, the department shall so notify the board. The board shall thereupon impose both of the following penalties:

(1) Pursuant to a repayment schedule approved by the board of no more than five years, the district shall repay to the board, for deposit in the State School Building Lease-Purchase Fund, an amount equal to the amount of project funding allocated under this chapter to acquire any site that was selected in material violation of the standards adopted by the department pursuant to subdivision (b) of Section 17251, together with interest at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of state general obligation bonds as established pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. The amount of any repayment owing under this paragraph for any fiscal year, which is not repaid otherwise by the district, shall be withheld by the board from any project funding that otherwise would be allocated to that district under this chapter in that fiscal year. As to any repayment obligation remaining for that fiscal year, the board shall notify the Superintendent of Public Instruction, who shall withhold the amount of that remaining obligation from the apportionments to be made to the district from the State School Fund in that fiscal year.

(2) The board shall prohibit the district from exercising the self-certifying authority under subdivision (b) under any subsequent applications for project funding for a period of up to five years following the date of the finding of a material inaccuracy, or until the district's repayment of the entire amount owing under paragraph (1), whichever occurs later.

(e) Any school district against which the board imposed the penalties under paragraphs (1) and (2) of subdivision (d) may submit for binding determination by an arbitrator the issue of whether the penalties imposed are disproportionate to the inaccuracy certified by the district. Except as otherwise provided by this chapter, the procedure governing the arbitration shall be as set forth in Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(f) It is the intent of the Legislature that audits as described in this section not interfere with the application and construction process under this chapter unless one or more violations are discovered.

17024.5. Upon request of any school district, the State Department of Education shall provide assistance in the evaluation and utilization of existing school facilities and the justification of the need for schoolsites, new facilities, and the rehabilitation or replacement of existing facilities, in accordance with board regulations.

17025. (a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable,

shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13 (commencing with Section 21000) of the Public Resources Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district under this chapter.

17029. (a) The board shall authorize the applicant school district to act as its agent in the performance of acts specifically approved by the board and all acts required pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. That authorization shall include, but is not limited to, the selection of schoolsites, the securing of appraisals, the contracting for architectural services, the advertisement for construction bids and the entering into of contracts therefor and the purchase of furniture and equipment.

(b) If, pursuant to the authority granted under subdivision (a), a self-certifying district submits to the board two or more independent appraisals and certifies to the board that the appraisals were performed by appraisers licensed or certified in accordance with Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and were obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2. In addition, the board shall use any of those appraisals, including an appraisal that is not the highest bid appraisal, for the purposes of this section, except that the board may substitute, for the results of those appraisals, the results of one or more independent appraisals, which may include an appraisal performed by the Department of General Services, obtained by the board for that purpose.

(c) If, pursuant to the authority granted under subdivision (a), any bid reported to the board by a self-certifying district as the lowest responsible bid for a construction contract does not exceed the cost limit established by the board for that purpose, and the district certifies to the board that the bid was obtained in accordance with standards and procedures imposed by the board for that purpose, the district shall not be required to document its compliance with those standards and procedures except as specified in Section 17041.2.

17029.5. Notwithstanding any other provisions of this chapter, the funding by the board of contracts entered into by a school district pursuant to this chapter shall not, in itself, make the board liable for any tort, breach of contract, or any other action for damages caused by a school district arising from those contracts. These contracts include, but are not limited to, contracts between the school district and its construction contractors, construction managers, architects, or engineers. The school district shall be liable for all torts, breaches of contract, or any other actions for damages caused by the school district.

17030. (a) In expending funds for any project under this chapter, a school district acts as an agent of the state and all sites purchased and improved, all equipment purchased, and all buildings constructed, altered or added to through the expenditure of funds apportioned under this chapter, are declared to be, and are, the property of the state.

(b) The Director of General Services shall file with the county

of any of the matters permitted by this section or any other provision of this chapter. Notwithstanding any other provision of law, the agent shall have the powers granted by the resolution for purposes of this chapter. The resolution shall be deemed to bind the school district or community college district, as the case may be, to any contract, agreement, instrument, or other document executed by the agent on behalf of the school district or community college district, and all duties, obligations, or responsibilities contained therein on the part of the school district or community college district, to the same extent as if duly authorized, executed, and delivered by the school district or community college district.

(d) This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this section, and the issuance of bonds to, borrowing of money from, or sale or purchase or lease of educational facilities from or to, the authority. Any agreement entered into in connection with the issuance of bonds, the borrowing of money or the sale, purchase, or lease of educational facilities, including, without limitation, any agreement for liquidity or credit enhancement under this section, need not comply with the requirements of any other law applicable to issuance of bonds, borrowing, selling, purchasing, leasing, pledge, encumbrance, or credit, as the case may be, by a school district or community college district, or by a county or city board of education or superintendent of schools or the Board of Governors of the California Community Colleges or Chancellor of the California Community Colleges.

17199.2. An action may be commenced under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds, the loan of the proceeds thereof, the sale, purchase, or lease of facilities under this chapter, or the legality and validity of any proceedings previously taken or proposed in a resolution of the authority to be taken for the authorization, issuance, sale, and delivery of the bonds, for the use of the proceeds thereof, or for the payment of the principal and interest thereon.

17199.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time under this chapter shall not exceed four hundred million dollars ($400,000,000).

(b) For purposes of subdivision (a), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17188.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 3. Part 10.5 (commencing with Section 17211) is added to the Education Code, to read:

PART 10.5. SCHOOL FACILITIES
CHAPTER 1. SCHOOLSITES
Article 1. General Provisions

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the

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SEC. 15. To the extent that the provisions of this act are substantially the same as existing statutory provisions relating to the same subject matter, the provisions shall be construed as restatements and continuations of existing statutory provisions and not as a new enactment.

SEC. 16. The Legislature finds and declares that the enactment of this act, in view of the nonsubstantive statutory changes made, will not result in new or additional costs to local agencies charged with any duties or responsibilities in connection therewith.

SEC. 17. Any section of any act enacted by the Legislature during the 1996 calendar year prior to the enactment of this act, that amends, amends and renumbers, adds, repeals and adds, or repeals a section, article, chapter, or part, that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act until January 1, 1998, at which time Sections 1 to 16 of this act shall become operative.

SEC. 18. The provisions of this act are severable. If any provisions of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Senate Bill No. 2073

CHAPTER 444

An act to amend Sections 21157 and 21080.5 of, to add Section 21158.1 to, and to repeal Section 833 of, the Public Resources Code, relating to the California Environmental Quality Act.

[Approved by Governor September 11, 1996. Filed with Secretary of State September 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2073, Leonard. Environmental protection: fish and game.

(1) Existing law, the California Environmental Quality Act, requires state and local lead agencies to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect, unless the project is exempt from the act.

The Department of Fish and Game is required to be the lead agency for purposes of the act for any project involving the issuance of a permit required pursuant to certain statutes relating to aquaculture. The act authorizes the preparation of a master environmental impact report for certain projects.

This bill would delete the requirement that the department be the lead agency for any project involving the issuance of a permit required pursuant to those certain statutes relating to aquaculture. The bill would also authorize the preparation of a master environmental impact report for regulations adopted by the Fish and Game Commission for the regulation of hunting and fishing.

(2) The act authorizes a plan or other written documentation required by a certified regulatory program of a state agency to be submitted in lieu of an environmental impact report pursuant to prescribed procedures.

The act authorizes a lead agency, based on an initial study, to make a finding that a proposed subsequent project will have no significant effect on the environment that was not identified in a master environmental impact report and no new or additional mitigation measures may be required. The act also authorizes a lead agency to prepare a focused environmental impact report on a subsequent project identified in a master environmental impact report.

This bill would prohibit the use of such a plan or other written documentation where a lead agency cannot make that finding and is required to prepare an environmental impact report or where the

lead agency is authorized to prepare a focused environmental impact report.

The people of the State of California do enact as follows:

SECTION 1. Section 833 of the Public Resources Code is repealed.

SEC. 2. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(9) Regulations adopted by the Fish and Game Commission for the regulation of hunting and fishing.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

SEC. 3. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation, containing environmental information and complying with paragraph (3) of subdivision (d), to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof which involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and which shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached

under the regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) (1) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In any action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner is a state agency.

(j) For purposes of this section, any air quality management district or air pollution control district is a state agency, except that

the approval, if any, by such a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

SEC. 4. Section 21158.1 is added to the Public Resources Code, to read:

21158.1. When a lead agency is required to prepare an environmental impact report pursuant to subdivision (d) of Section 21157.1 or is authorized to prepare a focused environmental impact report pursuant to Section 21158, the lead agency may not rely on subdivision (a) of Section 21080.5 for that purpose even though the lead agency's regulatory program is otherwise certified in accordance with Section 21080.5.

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Assembly Bill No. 298

CHAPTER 547

An act to amend Section 21080 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 15, 1996. Filed with Secretary of State September 16, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 298, Rainey. Environmental impact reports: congestion management programs: exemption.

(1) Existing law, the California Environmental Quality Act, requires a public lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project which it proposes to carry out or approve that may have a significant effect on the environment, as defined, unless the project is exempt from the act. Existing law also requires certain counties to develop, adopt, and annually update a congestion management program.

This bill would exempt a project for the development of a congestion management program from the act and make clarifying changes in related provisions.

The bill would impose a state-mandated local program by imposing new duties on local agencies with regard to determining the applicability of, and filing and posting notice of, the exemption.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) (1) For the purposes of this section and this division substantial evidence includes fact, a reasonable assumptior predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

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BILL NUMBER: SB 1748 CHAPTERED 09/24/96

CHAPTER 799
FILED WITH SECRETARY OF STATE SEPTEMBER 24, 1996
APPROVED BY GOVERNOR SEPTEMBER 22, 1996
PASSED THE SENATE AUGUST 31, 1996
PASSED THE ASSEMBLY AUGUST 31, 1996
AMENDED IN ASSEMBLY AUGUST 29, 1996
AMENDED IN ASSEMBLY AUGUST 15, 1996
AMENDED IN ASSEMBLY JUNE 10, 1996
AMENDED IN ASSEMBLY MAY 6, 1996
AMENDED IN SENATE APRIL 11, 1996

INTRODUCED BY Committee on Housing and Land Use (Senators Sher (Chairman), Costa, Kopp, Marks, Monteith, and Watson)

FEBRUARY 22, 1996

An act to amend Section 42238 of the Education Code, to amend Sections 65009, 65040.3, 65352, 65920, and 66031 of, to amend and renumber Section 65302.9 of, to add Section 66000.5 to, and to repeal Sections 65035.1 and 65907 of, the Government Code, to amend Sections 18025.5, 18035.1, 18075.5, 18117, 18304, 19825, 33021, 33320.2, 33324, 33367, 33676, and 51622 of, to repeal Section 33030.5 of, and to repeal Article 4 (commencing with Section 33250) of Chapter 3 of Part 1 of Division 24 of, the Health and Safety Code, relating to the Housing and Land Use Omnibus Act of 1996.

LEGISLATIVE COUNSEL'S DIGEST

SB 1748, Committee on Housing and Land Use. Housing and Land Use Omnibus Act of 1996.

Existing law generally regulates, pursuant to separate bodies of law, the areas of land use, housing and redevelopment.

This bill would enact the Housing and Land Use Omnibus Act of 1996 and would state legislative intent to combine several minor statutory changes relating to housing, land use and related topics into a single measure, and would make related findings and declarations.

This bill would designate specified provisions of existing law relating to imposition, adoption, and protest of various fees related to development as the Fee Mitigation Act. The bill would also designate a specific body of existing law as the Permit Streamlining Act.

Existing law relating to local planning provides that any city or county may adopt an ordinance or other regulation governing the issuance of permits for the use of property for occasional commercial filming, as specified.

This bill would specify that the legislative body of the city or county may perform the above function. In addition, the bill would relocate these provisions, to include them among the provisions of existing law relating to zoning.

Under existing law, any action brought in superior court relating to one of several land use related subjects may be subject to a mediation proceeding, as specified.

This bill would add to the potential mediation subjects specified actions relating to the Airport Land Use Commission.

Existing law relating to redevelopment provides that an unblighted noncontiguous area may not be included in a project area, unless the area is being used predominantly for relocation of owners or tenants from other noncontiguous areas in the project area, as specified, or for affordable housing, as specified.

This bill would revise the above criteria, by requiring that an unblighted noncontiguous area in a redevelopment project area be used for relocation purposes, or for the construction or rehabilitation

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of affordable housing.

Existing law relating to the California Housing and Infrastructure Finance Agency requires the agency to prepare an annual evaluation report, including an audit, on the agency's program of loan and bond insurance, as specified. Existing law further requires the agency to submit the annual report to the Governor and to each Member of the Legislature, no later than March 31 of each year.

This bill would instead require that the agency obtain an annual audit, but submit the above evaluation report biennially. The bill would require that audit and report be submitted to the chair and vice-chair of the Senate and Assembly housing policy committees, the Senate and Assembly budget committees, and the Joint Legislative Budget Committee, rather than to each Member of the Legislature. The bill would also change the date upon which the report and audit shall be submitted to November 1, annually for the audit, and biennially for the report.

Existing law requires a city or county that imposes a building permit requirement as a condition to constructing, altering, improving, demolishing, or repairing any building or structure to print specified declarations upon a building permit, relating to building project identification, licensed contractors, owner-builders, workers' compensation, and the construction lending agency.

This bill would delete the requirement for printing these declarations upon a building permit, and would create a state-mandated local program by instead requiring the city or county to require these declarations upon the issuance of any building permit.

This bill would also make technical changes to various provisions of existing law relating to statutes of limitations for land use related actions, manufactured housing safety, the duties of the Office of Planning and Research with respect to providing planning information to local jurisdictions and the adoption of redevelopment plans. The bill would eliminate a reference to truck campers in existing law provisions relating to the payment of registration fees for manufactured homes, mobilehomes, and commercial coaches. Additionally, the bill would correct or delete obsolete statutory cross-references, and would delete references in existing law to obsolete reports, and state and federal redevelopment programs.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that no reimbursement is required for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as, the Housing and Land Use Omnibus Act of 1996. The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills affecting housing, land use, and related topics. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to housing, land use, and related topics, into a single measure.

SEC. 1.5. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984-85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a

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revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995-96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996-97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985-86 fiscal year, the amount received per unit of average daily attendance in the 1984-85 fiscal year pursuant to Section 42238.7.

(5) For the 1985-86, 1986-87, and 1987-88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982-83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(1) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982-83 fiscal year.

(2) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982-83 fiscal years.

(3) Add the amounts in paragraphs (1) and (2).

(e) The base revenue limit per unit of average daily attendance shall be the lesser of the following amounts:

(1) The amount determined in subdivision (b).

(2) The amount computed pursuant to Section 42238 for the prior fiscal year divided by the prior fiscal year revenue limit average daily attendance times the sum of 1.0 and twice the percentage increase in revenue limits computed pursuant to Section 42238.1 for the current fiscal year.

(f) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(g) For the 1984-85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983-84 fiscal year, resulting from subsequent changes in employer contribution rates.

The reduction shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983-84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983-84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983-84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983-84 fiscal year.

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(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983-84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(i) This section shall become operative July 1, 1984.

SEC. 2. Section 65009 of the Government Code is amended to read:

65009. (a) (1) The Legislature finds and declares that there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects.

(2) The Legislature further finds and declares that a legal action challenging a decision of a city, county, or city and county has a chilling effect on the confidence with which property owners and local governments can proceed with projects. Legal actions filed to attack, review, set aside, void, or annul a decision of a city, county, or city and county pursuant to this division can prevent the completion of needed developments even though the projects have received required governmental approvals.

(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division.

(b) (1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

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(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

(3) The application of this subdivision to causes of action brought pursuant to subdivision (d) applies only to the final action taken in response to the notice to the city or county clerk. If no final action is taken, then the issue raised in the cause of action brought pursuant to subdivision (d) shall be limited to those matters presented at a properly noticed public hearing or to those matters specified in the notice given to the city or county clerk pursuant to subdivision (d), or both.

(c) Except as provided in subdivisions (d) and (i), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(1) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(2) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

(3) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(4) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.

(5) To attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit.

(6) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in paragraphs (1), (2), (3), (4), and (5).

(d) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1) It is brought in support of the development of housing which meet the requirements for housing for persons and families with low or moderate incomes set forth in Section 65915.

(2) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of this division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913).

A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or county clerk by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought

pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Sections 65700 and 65803, or any other provision of law, this section shall apply to charter cities.

(g) Except as provided in subdivision (d), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

(i) Where the action or proceeding challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to subdivision (h) of Section 65585.

SEC. 2.5. Section 65035.1 of the Government Code is repealed.

SEC. 3. Section 65040.3 of the Government Code is amended to read:

65040.3. When requested by a local or regional agency, the office may furnish information and technical and professional advice on the preparation, adoption, amendment, and implementation of general plans, specific plans, or other local or regional plans, the preparation, adoption, amendment, and enforcement of regulations, procedures, programs, and legislation required for the implementation of local or regional plans, and information and technical and professional advice concerning planning problems.

SEC. 4. Section 65302.9 of the Government Code is amended and renumbered to read:

65850.1. (a) The legislative body of any city or county may adopt an ordinance or other regulation governing the issuance of permits to engage in the use of property for occasional commercial filming on location. This section shall not limit the discretion of a city or county to limit, condition, or deny the use of property for occasional commercial filming on location to protect the public health, safety, or welfare.

(b) All ordinances and regulations enacted by a city or county regulating by permit the use of property for occasional commercial filming on location shall not be subject to zoning ordinances or other land use regulations of that jurisdiction unless the filming ordinance or regulation expressly states that it is subject to, or governed by, those zoning ordinances or other land use regulations.

(c) The use of property for occasional commercial filming on location engaged in pursuant to a filming permit issued by a city or county shall be permitted in any zone unless the zoning ordinance or other land use regulations of the jurisdiction expressly prohibit filming in that zone.

SEC. 5. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) Any federal agency if its operations or lands within its

jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) Any public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 6. Section 65907 of the Government Code is repealed.

SEC. 6.5. Section 65920 of the Government Code is amended to read:

65920. (a) This chapter shall be known and may be cited as the Permit Streamlining Act.

(b) Notwithstanding any other provision of law, the provisions of this chapter shall apply to all public agencies to the extent specified in this chapter, except that the time limits specified in Division 2 (commencing with Section 66410) of Title 7 shall not be extended by operation of this chapter.

SEC. 6.7. Section 66000.5 is added to the Government Code, to read:

66000.5. This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

SEC. 7. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9

of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 8. Section 18025.5 of the Health and Safety Code is amended to read:

18025.5. (a) Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.), the department is authorized to assume responsibility for enforcement of manufactured home and mobilehome construction and safety standards relating to any issue with respect to which a federal standard has been established. The department may adopt regulations to ensure acceptance by the Secretary of Housing and Urban Development of California's plan for administration and enforcement of federal manufactured home and mobilehome safety and construction standards.

(b) The department is authorized to conduct inspections and investigations which it determines may be necessary to secure enforcement of this part and regulations adopted pursuant thereto. For the purposes of enforcement of this part and the related regulations, persons duly designated by the director of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) Enter, at any reasonable times and without advance notice, any factory, warehouse, sales lot, or establishment in which manufactured homes, mobilehomes, recreational vehicles, commercial coaches, or special purpose commercial coaches are manufactured, stored, held for sale, sold, or offered for sale, rent, or lease.

(2) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any factory, warehouse, sales lot, or establishment, and inspect the books, papers, records, and documents to ensure compliance with this part.

SEC. 9. Section 18035.1 of the Health and Safety Code is amended to read:

18035.1. (a) As a part of the documents executed for every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the dealer and purchaser shall sign a receipt for deposit, a copy of which shall be provided to the purchaser and a copy shall be retained by the dealer for not less than three years. It shall state at least the following in type not less than 6-point type size:

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(1) A statement that the purchaser shall receive a copy of the purchase contract and receipt for deposit.

(2) A statement that all portions of the purchase documents and receipt for deposit shall be completed prior to obtaining the purchaser's signature.

(3) A statement of the specific amounts of the deposit, downpayment, or other category of funds required to be placed in escrow prior to closing, and a warning that the deposit may be withheld in escrow in case of a dispute between the purchaser and the dealer.

(4) A statement that the amounts of the deposit and downpayment shall be agreed upon by the purchaser and dealer and shall have been entered on the purchase documents and receipt of deposit prior to the purchaser's signing.

(5) Sections 18035, 18035.1, and 18035.3 of this code and Section 1797.3 of the Civil Code reprinted in their entirety.

(6) A statement that any oral promises or commitments that have been made are not binding unless they appear in writing on the purchase documents.

(7) A warning that a warranty document complying with Section 1797.3 of the Civil Code shall be provided to the purchaser of a new manufactured home or mobilehome immediately after signing the purchase documents.

(8) A statement that the terms and duration of any other warranty, not required by law, offered by the dealer shall be in writing.

(9) A statement that, if the purchaser has any complaints with respect to sales practices, delivery, warranty, or other matters related to the manufactured home or mobilehome, he or she may seek administrative relief from the department or legal relief in a court of competent jurisdiction.

(10) A statement that the sale will not be complete until the escrow for the sale closes.

(b) For the sale of a manufactured home or mobilehome not subject to registration by the department, the dealer shall provide a statement of fact, in type not less than 6-point type size, containing the information specified in paragraphs (6), (7), (8), (9), and (10) of subdivision (a) as part of the purchase documents.

(c) Where the sale of a new or used manufactured home or mobilehome subject to registration under this part does not involve a dealer, the department, by regulation, may require the seller and buyer to execute a receipt for deposit containing whatever information of the nature described in this section, the department deems appropriate.

SEC. 10. Section 18075.5 of the Health and Safety Code is amended to read:

18075.5. Manufactured homes, mobilehomes, commercial coaches, and floating homes sold or used within this state shall be subject to annual registration with the department and payment of registration fees prescribed by Section 18114 except as follows:

(a) Manufactured homes, mobilehomes, and floating homes subject to local property taxation pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, and not installed on foundation systems pursuant to Section 18551, shall be subject to registration and payment of fees and penalties prescribed by Section 18114 at the time of original registration with the department, and upon subsequent sale, resale, or transfer of title. For purposes of this section, a transfer of title includes, but is not limited to, any change, addition, or deletion of one or more registered owners, legal owners, or junior lienholders.

(b) Manufactured homes, mobilehomes, and commercial coaches installed or to be installed on foundation systems pursuant to Section 18551 shall be exempt from registration so long as they remain affixed to the foundation system. In the event that the manufactured home, mobilehome, or commercial coach, is removed from a foundation system for any purpose other than dismantling or reinstallation on a foundation system, it shall be immediately subject to registration with the department.

(c) Except as otherwise provided in subdivisions (d) and (e), registration of a manufactured home, mobilehome, or commercial coach previously registered in another state is due 20 days after the date of entry into California and is delinquent if application is not made and any fees due are not paid within 40 days after that date of entry.

(d) Any member of the armed forces, whether a resident or nonresident, shall also be entitled to exemption from registration with respect to a manufactured home or mobilehome owned by the person upon which there is displayed a valid registration issued for the manufactured home or mobilehome by the owner's home state of residence or by a foreign jurisdiction where the owner was regularly assigned and stationed for duty by competent military orders at the time the registration was issued. Competent military orders shall not include military orders for leave, for temporary duty, nor for any other assignment of any nature requiring the owner's presence outside the foreign jurisdiction where the owner was regularly assigned and stationed for duty.

(e) Any person who enters California for the purpose of establishing or reestablishing residence or accepting gainful employment following his or her discharge from the armed forces of this country may occupy a manufactured home or mobilehome owned by that person at the time of his or her discharge and registered to him or her in a foreign jurisdiction where his or her military orders required his or her presence without registering the manufactured home or mobilehome in this state until the expiration of the registration period current at the time of his or her discharge and entrance into California.

(f) Any new and previously unregistered, unoccupied manufactured home, mobilehome, or commercial coach which is part of an inventory held for sale by a manufacturer or dealer in the course of business.

The department may adopt regulations for exempting additional classes of manufactured homes, mobilehomes, and commercial coaches from registration under a temporary or one-trip permit system which permits the lawful transportation and use of manufactured homes, mobilehomes, and commercial coaches not otherwise subject to registration.

(g) Floating homes, which are subject to local property taxation, as prescribed by Section 229 of the Revenue and Taxation Code, shall be subject to registration at the time of sale and upon any subsequent sale, resale, or transfer of title. Floating homes are subject to the fees prescribed by subdivision (c) of Section 18114 upon registration or reregistration.

SEC. 11. Section 18117 of the Health and Safety Code is amended to read:

18117. An application for registration under this part of a manufactured home, mobilehome, or commercial coach previously registered outside of this state shall be accompanied by payment of the amount required to be paid under Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code with respect to the use of the manufactured home, mobilehome, or commercial coach by the applicant.

SEC. 12. Section 18304 of the Health and Safety Code is amended to read:

18304. (a) This part does not apply to any apartment house, hotel, or dwelling which is subject to the provisions of Part 1.5 (commencing with Section 17910) of this division.

(b) This part does not apply to electric, gas, or water facilities owned, operated, and maintained by a public utility.

SEC. 12.5. Section 19825 of the Health and Safety Code is amended to read:

19825. (a) Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant's Mailing Address _____

_____

Address of Building _____

_____

Owner's Name if known _____

Telephone No. _____

Contractor's Name _____

Contractor's Mailing Address _____

_____

Lic. No. _____

Architect or Engineer _____

Architect's or Engineer's Address _____

Lic. No. _____

In addition the city or county may require that there be included in the building project identification portion of a building permit, the following:

Assessor's Parcel Number* _____

Permit date _____

Permit number _____

Description of work _____

Building permit valuation _____

*To be entered by issuing agency.

LICENSED CONTRACTORS DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____

Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county which requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).):

(_) I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does such work himself or herself or through his or her own employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the

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owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

(_) I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a contractor(s) licensed pursuant to the Contractors License Law.).

(_) I am exempt under Sec. ____, B.&P.C. for this reason _____

Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

___ I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

___ I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

(This section need not be completed if the permit is for one hundred dollars ($100) or less).

___ I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____ Applicant: _____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and

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county ordinances and state laws relating to building construction, and

hereby authorize representatives of this county to enter upon the

above-mentioned property for inspection purposes.

_____ _____

Signature of Applicant or Agent Date

(b) The Contractors' State License Board shall semiannually compile and distribute to city, county, and city and county building departments a list of all contractors who did not secure payment of compensation in compliance with Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the Labor Code during any period for which workers were employed during the preceding six months.

SEC. 13. Section 33021 of the Health and Safety Code is amended to read:

33021. Redevelopment includes:

(a) The alteration, improvement, modernization, reconstruction, or rehabilitation, or any combination of these, of existing structures in a project area.

(b) Provision for open-space types of use, such as streets and other public grounds and space around buildings, and public or private buildings, structures and improvements, and improvements of public or private recreation areas and other public grounds.

(c) The replanning or redesign or original development of undeveloped areas as to which either of the following conditions exist.

(1) The areas are stagnant or improperly utilized because of defective or inadequate street layout, faulty lot layout in relation to size, shape, accessibility, or usefulness, or for other causes.

(2) The areas require replanning and land assembly for reclamation or development in the interest of the general welfare because of widely scattered ownership, tax delinquency, or other reasons.

SEC. 14. Section 33030.5 of the Health and Safety Code is repealed.

SEC. 15. Article 4 (commencing with Section 33250) of Chapter 3 of Part 1 of Division 24 of the Health and Safety Code is repealed.

SEC. 16. Section 33320.2 of the Health and Safety Code is amended to read:

33320.2. (a) The area included within a project and a project area may be either contiguous or noncontiguous. All noncontiguous areas of a project area shall be either blighted or necessary for effective redevelopment. An unblighted, noncontiguous area shall be conclusively deemed necessary for effective redevelopment if that area is being used predominantly for:

(1) The relocation of owners or tenants from other noncontiguous areas in the same project area or from other project areas in the community.

(2) The construction and rehabilitation of low- or moderate-income housing.

(b) An unblighted, noncontiguous area shall be deemed not necessary for effective redevelopment if that area is included for the purpose of obtaining the allocation of taxes from such area pursuant to Section 33670 without other substantial justification for its inclusion.

(c) The redevelopment agency shall not use the power of eminent domain for acquisition of property, other than vacant land, in noncontiguous, unblighted areas.

SEC. 17. Section 33324 of the Health and Safety Code is amended to read:

33324. A preliminary plan need not be detailed and is sufficient if it:

(a) Describes the boundaries of the project area.

(b) Contains a general statement of the land uses, layout of principal streets, population densities and building intensities, and standards proposed as the basis for the redevelopment of the project area.

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(c) Shows how the purposes of this part would be attained by redevelopment.
(d) Shows that the proposed redevelopment is consistent with the community's general plan.
(e) Describes, generally, the impact of the project upon the area's residents and upon the surrounding neighborhood.
SEC. 18. Section 33367 of the Health and Safety Code is amended to read:
33367. The ordinance shall contain all of the following:
(a) The purposes and intent of the legislative body with respect to the project area.
(b) The plan incorporated by reference.
(c) A designation of the approved plan as the official redevelopment plan of the project area.
(d) The findings and determinations of the legislative body that:

(1) The project area is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part.
(2) The redevelopment plan would redevelop the area in conformity with this part and in the interests of the public peace, health, safety, and welfare.
(3) The adoption and carrying out of the redevelopment plan is economically sound and feasible.
(4) The redevelopment plan is consistent with the general plan of the community, including, but not limited to, the community's housing element, which substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.
(5) The carrying out of the redevelopment plan would promote the public peace, health, safety, and welfare of the community and would effectuate the purposes and policy of this part.
(6) The condemnation of real property, if provided for in the redevelopment plan, is necessary to the execution of the redevelopment plan and adequate provisions have been made for payment for property to be acquired as provided by law.
(7) The agency has a feasible method or plan for the relocation of families and persons displaced from the project area, if the redevelopment plan may result in the temporary or permanent displacement of any occupants of housing facilities in the project area.
(8) (A) There are, or shall be provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of and available to the displaced families and persons and reasonably accessible to their places of employment.
(B) Families and persons shall not be displaced prior to the adoption of a relocation plan pursuant to Sections 33411 and 33411.1.
Dwelling units housing persons and families of low or moderate income shall not be removed or destroyed prior to the adoption of a replacement housing plan pursuant to Sections 33334.5, 33413, and 33413.5.
(9) All noncontiguous areas of a project area are either blighted or necessary for effective redevelopment and are not included for the purpose of obtaining the allocation of taxes from the area pursuant to Section 33670 without other substantial justification for their inclusion.
(10) Inclusion of any lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare is necessary for the effective redevelopment of the area of which they are a part; that any area included is necessary for effective redevelopment and is not included for the purpose of obtaining the allocation of tax increment revenues from the area pursuant to Section 33670 without other substantial justification for its inclusion.
(11) The elimination of blight and the redevelopment of the project area could not be reasonably expected to be accomplished by

private enterprise acting alone without the aid and assistance of the agency.

(12) The project area is predominantly urbanized, as defined by subdivision (b) of Section 33320.1.

(13) The time limitation and, if applicable, the limitation on the number of dollars to be allocated to the agency that are contained in the plan are reasonably related to the proposed projects to be implemented in the project area and to the ability of the agency to eliminate blight within the project area.

(e) A statement that the legislative body is satisfied that permanent housing facilities will be available within three years from the time occupants of the project area are displaced and that, pending the development of the facilities, there will be available to the displaced occupants adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

SEC. 19. Section 33676 of the Health and Safety Code is amended to read:

33676. (a) Prior to the adoption by the legislative body of a redevelopment plan providing for tax increment financing pursuant to Section 33670, any affected taxing agency may elect to be allocated, and every school district and community college district shall be allocated, in addition to the portion of taxes allocated to the affected taxing agency pursuant to subdivision (a) of Section 33670, all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 attributable to one or more of the following:

(1) Increases in the rate of tax imposed for the benefit of the taxing agency which levy occurs after the tax year in which the ordinance adopting the redevelopment plan becomes effective.

(2) If an agency pursuant to Section 33354.5 amends a redevelopment plan which does not utilize tax increment financing to add tax increment financing, and pursuant to subdivision (a) of Section 33670 uses the assessment roll last equalized prior to the effective date of the ordinance originally adopting the redevelopment plan, an affected taxing agency may elect to be allocated all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 which the affected taxing agency would receive if the agency were to use the assessment roll last equalized prior to the effective date of the ordinance amending the redevelopment plan to add tax increment financing.

(b) (1) Any local education agency that is a basic aid district or office at the time the ordinance adopting a redevelopment plan is adopted and that receives no state funding, other than that provided pursuant to Section 6 of Article IX of the California Constitution, pursuant to Section 2558, 42238, or 84751, as appropriate, of the Education Code, shall receive annually its percentage share of the property taxes from the project area allocated among all of the affected taxing entities during the fiscal year the funds are allocated, increased by an amount equal to the lesser of the following:

(A) The percentage growth in assessed value that occurs throughout the district, excluding the portion of the district within the redevelopment project area.

(B) Eighty percent of the growth in assessed value that occurs within the portion of the district within the redevelopment project area.

(2) Subparagraphs (A) and (B) of paragraph (1) shall not apply to a redevelopment plan adopted by the legislative body of a community if both of the following occur:

(A) The median household income in the community in which the redevelopment project area is located is less than 80 percent of the median household income in the county in which the redevelopment project area is located.

(B) The preliminary plan for the redevelopment plan was adopted on or before September 1, 1993, and the redevelopment plan was adopted on or before August 1, 1994.

(3) Any local education agency that is a basic aid district or

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office at the time the ordinance amending a redevelopment plan is adopted pursuant to Section 33607.7 and that receives no state funding, other than that provided pursuant to Section 6 of Article IX of the California Constitution, pursuant to Section 2558, 42238, or 84751, as appropriate, of the Education Code, shall receive either of the following:

(A) If an agreement exists that requires payments to the basic aid district, the amount required to be paid by an agreement between the agency and the basic aid district entered into prior to January 1, 1994.

(B) If an agreement does not exist, the percentage share of the increase in property taxes from the project area allocated among all of the affected taxing entities during the fiscal year the funds in the project area are allocated, derived from 80 percent of the growth in assessed value that occurs within the portion of the district within the redevelopment project area from the year in which the amendment takes effect pursuant to subdivision (c) of Section 33607.7.

(4) The redevelopment agency shall subtract from any payments made pursuant to this section the amount that a basic aid district receives pursuant to Sections 33607.5 and 33607.7 for the purposes of either paragraph (1) of subdivision (h) of Section 42238 of the Education Code or either Section 2558 or 84751 of the Education Code.

(c) The governing body of any affected taxing agency, other than a school district and a community college district, electing to receive allocation of taxes pursuant to this section in addition to taxes allocated to it pursuant to subdivision (a) of Section 33670 shall adopt a resolution to that effect and transmit the same, prior to the adoption of the redevelopment plan, to (1) the legislative body, (2) the agency, and (3) the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. Upon receipt by the official or officials of the resolution, allocation of taxes pursuant to this section to the affected taxing agency which has elected to receive the allocation pursuant to this section by the adoption of the resolution and allocation of taxes pursuant to this section to every school district and community college district shall be made at the time or times allocations are made pursuant to subdivision (a) of Section 33670.

(d) An affected taxing agency, at any time after the adoption of the resolution, may elect not to receive all or any portion of the additional allocation of taxes pursuant to this section by rescinding the resolution or by amending the same, as the case may be, and giving notice thereof to the legislative body, the agency, and the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. After receipt of a notice by the official or officials that an affected taxing agency has elected not to receive all or a portion of the additional allocation of taxes by rescission or amendment of the resolution, any allocation of taxes to the affected taxing agency required to be made pursuant to this section shall not thereafter be made but shall be allocated to the agency and the affected taxing agency shall thereafter be allocated only the portion of taxes provided for in subdivision (a) of Section 33670. After receipt of a notice by the official or officials that an affected taxing agency has elected to receive additional tax revenues attributable to only a portion of the increases in the rate of tax, only that portion of the tax revenues shall thereafter be allocated to the affected taxing agency in addition to the portion of taxes allocated pursuant to subdivision (a) of Section 33670, and the remaining portion thereof shall be allocated to the agency.

(e) As used in this section, "affected taxing agency" means and includes every public agency for the benefit of which a tax is levied upon property in the project area, whether levied by the public agency or on its behalf by another public agency.

(f) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5

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(commencing with Section 33360) of Chapter 4 on or after January 1, 1977.

SEC. 20. Section 51622 of the Health and Safety Code is amended to read:

51622. (a) The agency may contract with any private person or public agency for review of the administration of this part and for assistance in implementing this part.

(b) The agency shall prepare a biennial report on the condition of the program of loan and bond insurance authorized by this part. The report of the evaluation shall include an evaluation of program effectiveness in relation to cost and shall include recommendations and suggested legislation for the improvement of the program, if any.

The agency shall obtain an annual audit of the insurance fund's books and accounts with respect to its activities under this part to be made at least once for each calendar year by an independent certified public accountant. A copy of the annual audit and biennial report shall be transmitted to the Governor, to the chairperson and vice-chairperson of the Senate and Assembly housing policy committees, the Senate and Assembly budget committees, and the Joint Legislative Budget Committee, and made available for review by interested parties no later than November 1 of each year for the annual audit, and November 1 biennially for the program evaluation report.

SEC. 21. No reimbursement is required by Section 12.5 of this act pursuant to Section 6 of Article XIIIB of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by Section 12 of this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Assembly Bill No. 175

CHAPTER 415

An act to amend Sections 21080.4, 21080.14, and 21153 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 21, 1997. Filed with Secretary of State September 22, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 175, Torlakson. Environmental quality: development projects: notification.

Existing law, the California Environmental Quality Act, requires a state or local lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, as defined.

The act exempts specified development projects of not more than 45 units.

This bill would apply that exemption to those projects of not more than 100 units, and make related changes.

The bill would require the Office of Planning and Research to ensure that affected agencies are notified regarding early consultation requested by a lead agency with respect to certain projects, and meetings that are requested with respect to certain of those projects.

The people of the State of California do enact as follows:

SECTION 1. Section 21080.4 of the Public Resources Code is amended to read:

21080.4. (a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency and to those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency or public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental

impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency or any responsible agency or public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California may request one or more meetings between representatives of those agencies for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies or public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

(d) If a state agency is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

SEC. 2. Section 21080.14 of the Public Resources Code is amended to read:

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the

Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, the developer provides sufficient legal commitments to ensure continued availability of units for the lower income households for 30 years as provided in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan or any applicable specific plan or local coastal program as it existed on the date that the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site is an infill site that has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than five acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

SEC. 3. Section 21153 of the Public Resources Code is amended to read:

21153. (a) Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the project applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the project applicant that the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the project applicant for early consultation shall be made not later than 30 days after the date that the determination required by Section 21080.1 was made with respect to the project. The local lead agency may charge and collect a fee from the project applicant in an amount that does not exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

O

Assembly Bill No. 1807

CHAPTER 738

An act to amend Sections 21080.4 and 21081.7 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 25, 2000. Filed with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1807, Longville. California Environmental Quality Act: Department of Transportation.

(1) Under the existing California Environmental Quality Act (CEQA), if a lead agency determines that an environmental impact report is required, the lead agency is immediately required to send notice of that determination to each responsible agency, and those public agencies having jurisdiction by law over natural resources affected by the project. Existing law then requires those agencies to participate in the environmental review process, as specified.

Under this bill, if the lead agency determines that an environmental impact report is required, the lead agency would also be required to send notice to the Office of Planning and Research.

Existing law requires that transportation information resulting from a specified reporting or monitoring program required to be adopted by a public agency be submitted to the transportation planning agency in the region when the project has impacts that are of statewide, regional, or areawide significance.

This bill would also require the submission of the transportation information to the Department of Transportation under those circumstances.

By imposing new duties on local lead agencies, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 21080.4 of the Public Resources Code is amended to read:

21080.4. (a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall

immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, that request may also be made by the project applicant.

(d) With respect to the Department of Transportation, and with respect to any state agency that is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required

by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

SEC. 2. Section 21081.7 of the Public Resources Code is amended to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation when the project has impacts that are of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O

Assembly Bill No. 1532

CHAPTER 867

An act to amend Sections 21081.7, 21083.9, and 21092.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1532, Pavley. Environmental quality.

(1) The existing California Environmental Quality Act (CEQA) requires that transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to a specified provision of CEQA be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation when the project has impacts that are of statewide, regional, or areawide significance according to specified criteria.

This bill would require that the transportation information be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation for a project of statewide, regional, or areawide significance according to specified criteria.

(2) CEQA further requires that a lead agency call at least one scoping meeting for a proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. CEQA authorizes a lead agency to charge and collect a reasonable fee from any person proposing a project to recover the estimated costs incurred by the lead agency in preparing a negative declaration or environmental impact report and for procedures necessary to comply with CEQA for the project. Existing law requires specified notices to be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency.

This bill would additionally require a lead agency to call at least one scoping meeting for a project of statewide, regional, or areawide significance and would require the lead agency to provide notice of the scoping meeting to specified entities, thereby imposing a state-mandated local program.

The bill would require a lead agency to mail the notice of the scoping meeting to a person who has filed a written request for notices with specified entities.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 21081.7 of the Public Resources Code is amended to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation for a project of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

SEC. 2. Section 21083.9 of the Public Resources Code is amended to read:

21083.9. (a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for any of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) Any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) Any responsible agency.

(3) Any public agency that has jurisdiction by law with respect to the project.

(4) Any organization or individual who has filed a written request for the notice.

(c) For any entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

SEC. 3. Section 21092.2 of the Public Resources Code is amended to read:

21092.2. The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service. This section may not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O

STATE AGENCIES—INFRASTRUCTURE—FUNDS

CHAPTER 1016

A.B. No. 857

AN ACT to amend Sections 13102, 13103, 65041, 65042, 65048, 65049, and 66037 of, and to add Sections 65041.1 and 65404 to, the Government Code, relating to state planning.

[Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 857, Wiggins. Infrastructure planning: priorities and funding.

(1) Existing law requires the Governor, in conjunction with the Governor's Budget, to submit annually to the Legislature a proposed 5–year infrastructure plan containing specified information concerning infrastructure needed by state agencies, schools, and postsecondary educational institutions and a proposal for funding the needed infrastructure.

This bill would clarify the information that is required to be included in a proposal for funding state infrastructure identified in the 5–year plan.

(2) Existing law requires the Governor to prepare and cause to be maintained, reviewed, and revised a comprehensive State Environmental Goals and Policy Report.

This bill would require any revision to the report on and after January 1, 2004, to provide that the goals are consistent with state planning priorities, and would require a state agency that requests infrastructure to specify how that infrastructure is consistent with those priorities. This bill would define those priorities, which relate to infrastructure that supports infill development and redevelopment, cultural and historic resources, environmental and agricultural resources, and efficient development patterns.

(3) Existing law establishes proceedings for the mediation and resolution of land use disputes and makes those proceedings applicable to specified actions filed prior to January 1, 2002.

This bill would extend that date to January 1, 2006.

The people of the State of California do enact as follows:

SECTION 1. Section 13102 of the Government Code is amended to read:

13102. * * * In conjunction with the Governor's Budget submitted pursuant to Section 13337, the Governor shall submit annually a proposed five-year infrastructure plan to the Legislature. This plan shall cover a five-fiscal-year period beginning with the fiscal year that is the same as that covered by the Governor's Budget with which it is being submitted.

The infrastructure plan shall contain the following information for the five years that it covers:

(a)(1) Identification of new, rehabilitated, modernized, improved, or renovated infrastructure requested by state agencies * * *.

(2) Aggregate funding for transportation as identified in the four-year State Transportation Improvement Program Fund Estimate prepared pursuant to Sections 14524 and 14525.

(3) Infrastructure needs for Kindergarten through grade 12 public schools necessary to accommodate increased enrollment, class size reduction, and school modernization.

(4) The instructional and instructional support facilities needs for the University of California, the California State University, and the California Community Colleges.

(b) The estimated cost of providing the infrastructure identified in subdivision (a).

(c) A proposal for funding the infrastructure identified in subdivision (a), * * * that includes all of the following * * *:

* * * (1) Criteria and priorities used to identify and select the infrastructure it does propose to fund, including criteria used to identify and select infrastructure that by January 1, 2005, shall be consistent with the state planning priorities specified pursuant to Section 65041.1 for infrastructure requested by state agencies pursuant to paragraph (1) of subdivision (a).

(2) * * * Sources of funding* * * , including, but not limited to, General Fund, state special funds, federal funds, general obligation bonds, lease revenue bonds, and installment purchases.

(3) An evaluation of the impact of the new state debt on the state's existing overall debt position if the plan proposes the issuance of new state debt * * *.

* * * (4)(A) Recommended specific projects for funding * * * or the recommended type and amount of infrastructure to be funded in order to meet programmatic objectives that shall be identified in the proposal.

* * * (B) Any capital outlay or local assistance appropriations intended to fund infrastructure included in the Governor's Budget * * * shall derive from, and be encompassed by, the funding proposal contained in the plan.

SEC. 2. Section 13103 of the Government Code is amended to read:

13103. By January 1, 2005, if a state agency requests infrastructure pursuant to paragraph (1) of subdivision (a) of Section 13102, that agency shall specify how that infrastructure is consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor may also order any entity of state government to assist in preparation of the infrastructure plan.

SEC. 3. Section 65041 of the Government Code is amended to read:

65041. The Governor shall prepare and thereafter shall cause to be maintained, regularly reviewed, and revised a comprehensive State Environmental Goals and Policy Report. In the preparation of the report, priority shall be given to the development of statewide land use policy, including the recommendations resulting from the land use planning and implementation program set forth in Section 65040.6, and including the recommendations of the Planning Advisory and Assistance Council established pursuant to subdivision (a) of Section 65040.6. The report shall contain, but not be limited to, the following:

(a) An overview, looking 20 to 30 years ahead, of state growth and development and a statement of approved state environmental goals and objectives, including those directed to land use, population growth and distribution, development, the conservation of natural resources, and air and water quality.

(b) Description of new and revised state policies, programs and other actions of the executive and legislative branches required to implement statewide environmental goals, including intermediate-range plans and actions directed to natural resources, human resources and transportation.

(c) On and after January 1, 2004, any revision to the report shall provide that the goals are consistent with the state planning priorities specified pursuant to Section 65041.1.

SEC. 4. Section 65041.1 is added to the Government Code, to read:

65041.1. The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be as follows:

(a) To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.

(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) To encourage efficient development patterns by ensuring that any infrastructure associated with development that is not infill supports new development that uses land efficiently, is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b), is in an area appropriately planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.

SEC. 5. Section 65042 of the Government Code is amended to read:

65042. Every officer, agency, department, or instrumentality of state government shall * * * do all of the following:

(a) Cooperate in the preparation and maintenance of the State Environmental Goals and Policy Report * * *.

(b) By January 1, 2005, ensure that their entity's functional plan is consistent with the state planning priorities specified pursuant to Section 65041.1 and annually demonstrate to the office, and to the Department of Finance when requesting infrastructure pursuant to subdivision (a) of Section 13102, how the plans are consistent with those priorities.

(c) Comply with any request for advice, assistance, information or other material.

SEC. 6. Section 65048 of the Government Code is amended to read:

65048. The State Environmental Goals and Policy Report shall be revised, updated, and * * * transmitted by the Governor to the Legislature every four years. Any revision on and after January 1, 2004, shall be consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor, may at any time, inform and seek advice of the Legislature on proposed changes in state environmental goals, objectives, and policies.

SEC. 7. Section 65049 of the Government Code is amended to read:

65049. Following approval of the State Environmental Goals and Policy Report as provided in Section 65046, the report shall serve as a guide for state expenditures * * *. In transmitting the annual budget to the Legislature, information shall be included relating proposed * * * expenditures to the achievement of statewide goals and objectives set forth in the report.

SEC. 8. Section 65404 is added to the Government Code, to read:

65404. (a) On or before January 1, 2005, the Governor shall develop conflict resolution processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(b) The conflict resolution process may be requested by a local agency, project applicant, or one or more state agencies.

SEC. 9. Section 66037 of the Government Code is amended to read:

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

Assembly Bill No. 3041

CHAPTER 1052

An act to amend Sections 21082.1, 21083, and 21091 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3041, Committee on Natural Resources. Environmental quality: use of State Clearinghouse by lead agencies.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment, if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA also requires any draft EIR, EIR, or negative declaration prepared pursuant to CEQA be prepared directly by, or under contract to, a public agency, and requires the lead agency to circulate draft documents that reflect its independent judgment to appropriate state agencies for review. CEQA defines a responsible agency as a public agency other than a lead agency that has responsibility for carrying out or approving a project, and existing guidelines adopted by the Office of Planning and Research define a trustee agency as a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the state. Existing guidelines require each lead agency to submit draft EIRs and negative declarations to the State Clearinghouse in order to be distributed to applicable state agencies for review, and require each lead agency to submit not less than 10 copies of draft EIRs and negative declarations to the State Clearinghouse, unless the State Clearinghouse approves a lower number in advance.

This bill would require any mitigated negative declaration prepared pursuant to CEQA to be prepared directly by, or under contract to, a public agency. The bill would require each lead agency to submit a sufficient number of copies of a draft EIR, proposed negative declaration, or proposed mitigated negative declaration to the State

Clearinghouse for review and comment by state agencies, and to submit a copy of that document in an electronic form, if a state agency is the lead agency, a responsible agency, trustee agency, or otherwise has jurisdiction over the project, or if the project is of statewide, regional, or areawide environmental significance. By imposing additional duties on local lead agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 21082.1 of the Public Resources Code is amended to read:

21082.1. (a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section

21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

SEC. 2. Section 21083 of the Public Resources Code is amended to read:

21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if any of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to

completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

SEC. 3. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration shall not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d) (1) The lead agency shall consider any comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e) (1) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any comments that were received and considered pursuant to paragraph (1) of subdivision (d).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

O

Senate Bill No. 1393

CHAPTER 1121

An act to amend Sections 21080.5, 21151, 21159.9, and 21167.6 of, and to add Section 21167.6.5 to, the Public Resources Code, relating to environmental protection.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1393, Kuehl. California Environmental Quality Act.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA authorizes a plan or other written documentation required by a certified regulatory program or state agency to be submitted in lieu of an environmental impact report pursuant to prescribed procedures.

This bill would require the Secretary of the Resources Agency, by July 1, 2003, to develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of CEQA, and would require the secretary to provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs. The bill would also require the secretary to provide a significant opportunity for public participation in developing that protocol.

(2) CEQA requires the Office of Planning and Research to implement a public assistance and information program that includes establishing a public education and training program, a data base to assist in the preparation of environmental documents, and a central repository for the collection, storage, retrieval, and dissemination of specified CEQA notices.

This bill would require, commencing January 1, 2003, that copies of any documents submitted in electronic format to the office pursuant to CEQA be furnished by the office to the California State Library, and would require the California State Library to be the repository for those

documents and to make them available for viewing by the general public upon request.

(3) CEQA authorizes the appeal of the certification of an environmental impact report by a local lead agency that is not elected to that lead agency's elected decisionmaking body, if that body exists.

This bill would expand that authorization to include any environmental review document that is certified or authorized by a local lead agency that is not elected.

(4) CEQA requires, in any action or proceeding to attack, review, set aside, void, or annul specified actions by a public agency pursuant to CEQA, except the Public Utilities Commission, that the plaintiff or petitioner file a request that the public agency prepare a record of proceedings relating to the subject of the action or proceeding. CEQA also requires that the request, together with the complaint or petition, be served on the public agency not later than 10 business days from the date that the action or proceeding was filed.

This bill would require that request to be served personally on the state agency.

This bill would also require the petitioner or plaintiff to name any recipient of an approval that is the subject of the action or proceeding as a real party in interest, and to serve the petition or complaint on that real party in interest with the petition or complaint not later than 20 business days following service of the petition or complaint on the public agency. The bill would specify that a failure to name any other potential parties would not be grounds for dismissal of the action or proceeding. The bill would also require the public agency to provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and public agencies with jurisdiction over a natural resource affected by the project, and would require the petitioner or plaintiff to provide those responsible agencies and public agencies with notice of the action or proceeding within 15 days of receipt of that list. By imposing additional duties on local public agencies, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) (1) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In any action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner is a state agency.

(j) For purposes of this section, any air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section

only if, and to the extent that, the approval adopts or amends rules or regulations.

(k) (1) The secretary, by July 1, 2003, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs.

(2) The secretary shall provide a significant opportunity for public participation in developing the protocol described in paragraph (1) including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior to the meeting to any person who files a written request for a notice with the agency.

SEC. 2. Section 21151 of the Public Resources Code is amended to read:

21151. (a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

SEC. 3. Section 21159.9 of the Public Resources Code is amended to read:

21159.9. The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish and maintain a data base to assist in the preparation of environmental documents.

(c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.

(d) Commencing January 1, 2003, copies of any documents submitted in electronic format to the Office of Planning and Research pursuant to this division shall be furnished by the office to the California State Library. The California State Library shall be the repository for those electronic documents, which shall be made available for viewing by the general public upon request.

SEC. 4. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 5. Section 21167.6.5 is added to the Public Resources Code, to read:

21167.6.5. (a) The petitioner or plaintiff shall name, as a real party in interest, any recipient of an approval that is the subject of an action or proceeding brought pursuant to Section 21167, 21168, or 21168.5, and shall serve the petition or complaint on that real party in interest, by personal service, mail facsimile, or any other method permitted by law not later than 20 business days following service of the petition or complaint on the public agency.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and any public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential parties, other than those described in subdivision (a) or (b), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) Nothing in this section is intended to affect an existing right of a party to intervene in the action.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

O

Exhibit 4
Public Resources Code Sections Cited

§ 21002.1. Use of environmental impact reports; policy

In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

(Added by Stats.1976, c. 1312, § 1.5. Amended by Stats.1977, c. 1200, p. 3996, § 1.5; Stats.1984, c. 1514, § 2; Stats.1994, c. 1230 (S.B.749), § 1, eff. Sept. 30, 1994.)

§ 21003. Planning and environmental review procedures; documents; reports; data base; administration of process

The Legislature further finds and declares that it is the policy of the state that:

(a) Local agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.

(b) Documents prepared pursuant to this division be organized and written in a manner that will be meaningful and useful to decisionmakers and to the public.

(c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.

(d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

(e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.

(f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

(Added by Stats.1976, c. 1312, § 2. Amended by Stats.1993, c. 1130 (A.B.1888), § 2.)

§ 21003.1. Environmental effects of projects; comments from public and public agencies to lead agencies; availability of information

The Legislature further finds and declares it is the policy of the state that:

(a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

(Added by Stats.1985, c. 85, § 1.)

§ 21080.09. Public higher education; campus location; long range development plans

(a) For purposes of this section, the following definitions apply:

(1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.

(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.

(c) The approval of a project on a particular campus or medical center of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.

(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division.

(Added by Stats.1989, c. 659, § 1.)

§ 21080.1. Environmental impact report or negative declaration; determination by lead agency; finality; consultation

(a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

(Added by Stats.1977, c. 1200, p. 3997, § 3. Amended by Stats.1993, c. 1130 (A.B. 1888), § 4; Stats.1994, c. 1230 (S.B.749), § 6, eff. Sept. 30, 1994.)

§ 21080.3. Consultation with responsible agencies; assistance by office of planning and research

(a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency.

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies for a proposed project. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant.

(Added by Stats.1977, c. 1200, p. 3998, § 5. Amended by Stats.1978, c. 1113, p. 3403, § 8.2, eff. Sept. 26, 1978; Stats.1993, c. 1130 (A.B.1888), § 5.)

§ 21080.4. Environmental impact report; requirement determined by lead agency; duties of responsible agencies and certain public agencies; consultation; assistance by office of planning and research

(a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and * * * those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.

(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.

(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, * * * that request may also be made by the project applicant.

(d) * * * With respect to the Department of Transportation, and with respect to any state agency that is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

(Amended by Stats.1997, c. 415 (A.B.175), § 1; Stats.2000, c. 738 (A.B.1807), § 1.)

§ 21081. Necessary findings where environmental impact report identifies effects

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

(Added by Stats.1976, c. 1312, § 9. Amended by Stats.1993, c. 1131 (S.B.919), § 6; Stats.1994, c. 1294 (A.B.314), § 2, eff. Oct. 4, 1994.)

§ 21081.6. Findings or negative declarations; reporting or monitoring project changes; effect on environment; conditions

(a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

(Added by Stats.1988, c. 1232, § 1. Amended by Stats.1992, c. 1070 (A.B.375), § 1; Stats.1993, c. 1130 (A.B.1888), § 7; Stats.1994, c. 1230 (S.B.749), § 8, eff. Sept. 30, 1994; Stats.1994, c. 1294 (A.B.314), § 4.5, eff. Oct. 4, 1994.)

§ 21082. Public agencies; adoption of objectives, criteria and procedures; consistency with guidelines

All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1975, c. 242, § 1; Stats.1976, c. 1312, § 9.5.)

§ 21082.1. Draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration; preparation by public agency

(a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, * * * negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

(Amended by Stats.2002, c. 1052 (A.B.3041), § 1.)

§ 21082.2. Significant effect on environment; determination; environmental impact report preparation

(a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

(Added by Stats.1984, c. 1514, § 6. Amended by Stats.1993, c. 1131 (S.B.919), § 7.)

§ 21083. Office of Planning and Research; preparation and development of guidelines; conditions

(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if any of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, " cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall * * * include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that * * * a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies * * *, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration * * *, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(Amended by Stats.2002, c. 1052 (A.B.3041), § 2.)

§ 21083.2. Archaeological resources; determination of effect of project; EIR or negative declaration; mitigation measures

(a) [**Determination of significant effect on archaeological resources; EIR and negative declarations**] As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) [**Preservation or nondisturbance requirements**] If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

(1) Planning construction to avoid archaeological sites.

(2) Deeding archaeological sites into permanent conservation easements.

(3) Capping or covering archaeological sites with a layer of soil before building on the sites.

(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) [**Mitigation measures**] To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) [**Excavation as mitigation**] Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

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(e) [**Amount paid for mitigation measures**] In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars ($200) per unit for any of the next 99 units.

(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.

(C) One hundred dollars ($100) per unit in excess of 500 units.

(f) [**Field excavation phase of mitigation plan**] Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) [**Unique archaeological resource; definition**] As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) [**Nonunique archaeological resource; definition**] As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) [**Accidental discoveries of archaeological sites; provisions by lead agency**] As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction.

These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) [**Application to specified projects**] This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) [**Additional costs to local agencies**] Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(*l*) [**Application of section**] Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

(Added by Stats.1982, c. 1623, p. 6486, § 1. Amended by Stats.1985, c. 287, § 1; Stats.1993, c. 375 (S.B.104), § 1.)

§ 21091. Draft environmental impact reports, proposed negative declarations, and proposed mitigated negative declarations; review periods

(a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration shall not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or * * * proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d)(1) The lead agency shall consider any comments it receives on a draft environmental impact report * * *, proposed negative declaration, * * * or proposed mitigated negative declaration if those comments are received within the public review period.

(2)(A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e)(1) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any comments that were received and considered pursuant to paragraph (1) of subdivision (d).

(Amended by Stats.2002, c. 1052 (A.B.3041), § 3.)

§ 21092. Public notice of preparation of environmental impact report or negative declaration; publication

(a) Any lead agency which is preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.

(b)(1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.

(2) This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(Added by Stats.1976, c. 1312, § 15. Amended by Stats.1980, c. 131, p. 303, § 1, eff. May 28, 1980; Stats.1989, c. 141, § 1, eff. July 14, 1989; Stats.1989, c. 907, § 3; Stats.1993, c. 1130 (A.B.1888), § 12.)

§ 21092.1. Addition of new information; notice and consultation

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

(Added by Stats.1984, c. 1514, § 7.)

§ 21092.2. Requests for certain notices

The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service. This section may not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

(Amended by Stats.2001, c. 867 (A.B.1532), § 3.)

§ 21092.3. Posting of certain notices

The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

(Added by Stats.1989, c. 907, § 5. Amended by Stats.1993, c. 1130 (A.B.1888), § 13.)

§ 21092.4. Consultation with transportation planning agencies and public agencies

(a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site.

(Added by Stats.1989, c. 626, § 2.)

§ 21092.5. Proposed response to public agency comments received by lead agency; notice to agency commenting on negative declaration; untimely comments

(a) At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.

(b) The lead agency shall notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared. If notice to the commenting public agency is provided pursuant to Section 21092, the notice shall satisfy the requirement of this subdivision.

(c) Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.

(Added by Stats.1991, c. 905 (A.B.1642), § 2.)

§ 21092.6. Application of Govt. C. § 65962.5; duties of lead agency; notice by environmental protection agency of failure to specify

(a) The lead agency shall consult the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list. The lead agency shall indicate whether a site is on any list not already identified by the applicant. The lead agency shall specify the list and include the information in the statement required pursuant to subdivision (f) of Section 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The requirement in this section to specify any list shall not be construed to limit compliance with this division.

(b) If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency did not accurately specify or did not specify any list pursuant to subdivision (a), the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision.

(c) This section applies only to projects for which applications have not been deemed complete pursuant to Section 65943 of the Government Code on or before January 1, 1992.

(Added by Stats.1991, c. 1212 (A.B.869), § 3.)

§ 21094. Later projects; tiered environmental impact reports; initial study; use of prior reports

(a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

(Added by Stats.1984, c. 1514, § 8. Amended by Stats.1985, c. 418, § 2; Stats.1994, c. 1294 (A.B.314), § 6, eff. Oct. 4, 1994.)

§ 21100. Environmental impact report on proposed state projects; significant effect; cumulative impact analysis

(a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 2.5, eff. Dec. 5, 1972; Stats.1974, c. 276, p. 501, § 1, operative Jan. 7, 1975; Stats.1976, c. 1312, § 16; Stats.1981, c. 264, p. 1351, § 1; Stats.1993, c. 1130 (A.B. 1888), § 14; Stats.1994, c. 1294 (A.B.314), § 7, eff. Oct. 4, 1994; Stats.1994, c. 1230 (S.B.749), § 9, eff. Sept. 30, 1994.)

§ 21102. Request for or authorization of expenditure of funds; statement of effect on environment

No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report.

Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 3, eff. Dec. 5, 1972.)

§ 21150. Environmental impact report required before allocation of state or federal funds

State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 10, eff. Dec. 5, 1972.)

§ 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report; significant effect; appeal to elected decision-making body

(a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) * * * If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not * * * subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

(Amended by Stats.2002, c. 1121 (S.B.1393), § 2.)

§ 21151.2. School site proposed acquisition or addition; notice to planning commission; investigation; report

To promote the safety of pupils and comprehensive community planning the governing board of each school district before acquiring title to property for a new school site or for an addition to a present school site, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the report does not favor the acquisition of the property for a school site, or for an addition to a present school site, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report is received.

(Added by Stats.1987, c. 1452, § 533.)

§ 21151.8. Schoolsite acquisition or construction; approval of environmental impact report or negative declaration; conditions

(a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(2) The lead agency preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency

in which the proposed schoolsite is located, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the lead agency shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no such facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency which does not respond within 30 days.

(b) If a lead agency has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(Added by Stats.1990, c. 1602 (S.B.2262), § 3. Amended by Stats.1991, c. 1183 (A.B.928), § 18.)

§ 21152. Local agency; approval or determination to carry out project; notice; contents; public inspection; posting

(a) Whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than nine months.

(Added by Stats.1972, c. 1154, p. 2276, § 12, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 2, eff. March 4, 1974; Stats.1984, c. 250, § 7; Stats.1984, c. 1357, § 2; Stats.1985, c. 338, § 3; Stats.1993, c. 1130 (A.B.1888), § 16; Stats.1994, c. 1294 (A.B.314), § 11, eff. Oct. 4, 1994.)

§ 21153. Local lead agency; consultations prior to completion of impact report

(a) Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the project applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the project applicant that the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the project applicant for early consultation shall be made not later than 30 days after the date that the determination required by Section 21080.1 was made with respect to the project. The local lead agency may charge and collect a fee from the project applicant * * * in an amount that does not exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

(Amended by Stats.1997, c. 415 (A.B.175), § 3.)

§ 21154. Issuance of project order by state; effect on impact report of local agency

Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

(Added by Stats.1972, c. 1154, p. 2276, § 14, eff. Dec. 5, 1972.)

§ 21157. Preparation; content; fee program

(a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(9) Regulations adopted by the Fish and Game Commission for the regulation of hunting and fishing.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

(Amended by Stats.1996, c. 444 (S.B.2073), § 2.)

§ 21157.1. Review of subsequent projects described in report; requirements

The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

(Added by Stats.1993, c. 1130 (A.B.1888), § 18. Amended by Stats.1994, c. 1294 (A.B.314), § 13, eff. Oct. 4, 1994.)

§ 21157.5. Mitigated negative declarations; preparation; conditions; alternative

(a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

(Added by Stats.1993, c. 1130 (A.B.1888), § 18.)

§ 21158. Purpose; content; additional significant effect on the environment

(a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to paragraph (2) of subdivision (a) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

(Added by Stats.1993, c. 1130 (A.B.1888), § 18. Amended by Stats.1994, c. 1294 (A.B.314), § 16, eff. Oct. 4, 1994.)

§ 21161. Completion of impact report; notice; validity of project

Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

(Added by Stats.1972, c. 1154, p. 2276, § 15, eff. Dec. 5, 1972. Amended by Stats.1984, c. 571, § 2.)

§ 21165. Lead agency; preparation of impact report

When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency; and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency, or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project, may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate, within 21 days of receiving such request, the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4002, § 15.)

§ 21166. Subsequent or supplemental impact report; conditions

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4003, § 16.)

§ 21167. Commencement of actions or proceedings; time

Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days from the date of the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with this division shall be commenced within 30 days from the date of the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first-class postage prepaid. The date upon which this notice is mailed shall not affect the time periods specified in subdivisions (b), (c), (d), and (e).

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 125, § 3, eff. March 4, 1974; Stats.1977, c. 1200, p. 4003, § 17; Stats.1994, c. 1294 (A.B.314), § 19, eff. Oct. 4, 1994; Stats.1995, c. 801 (A.B.1860), § 1.)

§ 21167.6. **Record of proceedings; clerk's transcript on appeal; filing briefs on appeal; date of appeal for hearing**

Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b)(1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

(Amended by Stats.2002, c. 1121 (S.B.1393), § 4.)

§ 21167.6.5. Naming of recipient of an approval that is subject of action or proceeding as real party in interest; service of petition or complaint; list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project; failure to name potential parties; right to intervene

(a) The petitioner or plaintiff shall name, as a real party in interest, any recipient of an approval that is the subject of an action or proceeding brought pursuant to Section 21167, 21168, or 21168.5, and shall serve the petition or complaint on that real party in interest, by personal service, mail facsimile, or any other method permitted by law not later than 20 business days following service of the petition or complaint on the public agency.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and any public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential parties, other than those described in subdivision (a) or (b), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) Nothing in this section is intended to affect an existing right of a party to intervene in the action.

(Added by Stats.2002, c. 1121 (S.B.1393), § 5.)

§ 21167.8. Settlement meeting; presettlement and settlement statements; further settlement conference; failure to participate

(a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

(Added by Stats.1984, c. 1514, § 13. Amended by Stats.1993, c. 1130 (A.B.1888), § 22; Stats.1994, c. 1294 (A.B.314), § 23, eff. Oct. 4, 1994; Stats.1995, c. 801 (A.B.1860), § 2.)

§ 21168.9. Public agency actions; noncompliance with division; court order; content; restrictions

(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

(Added by Stats.1984, c. 1213, § 1. Amended by Stats.1993, c. 1131 (S.B.919), § 9.)

Exhibit 5
Education Code Sections Cited

§ 17025. Prior written approval of department of general services; certification by self-certifying district or board

(a) The board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

(b) The board, or the self-certifying district, as applicable, shall certify the compliance of a project with Sections 17212, 17212.5, and 17213, with Division 13 (commencing with Section 21000) of the Public Resources Code, and with any other law that applies to that project, but may require documentation of compliance only as to requirements that are applicable under this chapter. Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district shall be deemed to be the "lead agency" with regard to any project funded for that district under this chapter.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

§ 66031. Actions subject to mediation proceeding; selecting a mediator; considerations; failure to select a mediator

(a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese–Knox Local Government Reorganization Act (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

§ 66031.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) The Office of Permit Assistance within the Trade and Commerce Agency, pursuant to its authority in Article 1 (commencing with Section 15399.50) of Chapter 11 of Part 6.7 of Division 3 of Title 2.

(4) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency which can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

(Added by Stats.1994, c. 300 (S.B.517), § 1. Amended by Stats.1995, c. 686 (S.B.660), § 7, eff. Oct. 10, 1995, operative Jan. 1, 1996; Stats.1996, c. 799 (S.B.1748), § 7.)

§ 66034. Failure of mediation to resolve action; settlement conferences

If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.

(Added by Stats.1994, c. 300 (S.B.517), § 1.)

Exhibit 7
Title 5, California Code of Regulations Sections Cited

§ 14011. Procedures for Site Acquisition — State–Funded School Districts.

A state–funded school district is defined as a school district having a project funded under Chapter 12.5 (commencing with Section 17070.10) of the Education Code. A state–funded school district, before acquiring title to real property for school use, shall obtain written approval from the California Department of Education using the following procedures:

(a) Request a preliminary conference with a consultant from the School Facilities Planning Division and in consultation review and evaluate sites under final consideration.

(b) Contact the School Facilities Planning Division of the California Department of Education to obtain a "School Facilities Planning Division Field Site Review," form SFPD 4.0, published by the California Department of Education, as last amended in December 1999 and incorporated into this section by reference, in toto, which lists the site options in order of merit according to the site selection standards delineated in Section 14010.

(c) Prepare a statement of policies as delineated on the "School Facilities Planning Division School Site Report," form SFPD 4.02, as last amended in December 1999 and incorporated into this section by reference, in toto, covering the range and organization of grades to be served, the transportation of pupils, and the ultimate maximum pupil enrollment to be housed on the site. Prepare a statement showing how the site is appropriate in size as justified by the school district's Facilities Master Plan, including acreage increases above the California Department of Education recommendation made to compensate for off–site mitigation. A school district may choose, in place of a master plan, a developer fee justification document or a five–year plan if it addresses enrollment projections, needed schools, and site sizes.

(d) Prepare maps showing present and proposed school sites, significant roads or highways, unsanitary or hazardous installations, such as airports or industries and the indicated boundary of the pupil attendance area to be served as delineated on form SFPD 4.02.

(e) Meet with appropriate local government, recreation, and park authorities to consider possible joint use of the grounds and buildings and to coordinate the design to benefit the intended users as required by Education Code Section 35275.

(f) Give written notice to the local planning agency having jurisdiction to review the proposed school site or addition to an existing school site and request a written report from the local planning agency of the investigations and recommendations for each proposed site with respect to conformity with the adopted general plan as required by Public Resources Code Section 21151.2 and Government Code Section 65402.

(g) Comply with Education Code Sections 17212 and 17212.5, with particular emphasis upon an engineering investigation made of the site to preclude locating the school on terrain that may be potentially hazardous:

(1) The geological and soils engineering study shall address all of the following:

(A) Nature of the site including a discussion of liquefaction, subsidence or expansive soils, slope, stability, dam or flood inundation and street flooding.

(B) Whether the site is located within a special study zone as defined in Education Code Section 17212.

(C) Potential for earthquake or other geological hazard damage.

(D) Whether the site is situated on or near a pressure ridge, geological fault or fault trace that may rupture during the life of the school building and the student risk factor.

(E) Economic feasibility of the construction effort to make the school building safe for occupancy.

(2) Other studies shall include the following:

(A) Population trends

(B) Transportation

(C) Water supply

(D) Waste disposal facilities

(E) Utilities

(F) Traffic hazards

(G) Surface drainage conditions

(H) Other factors affecting initial and operating costs.

(h) Prepare an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000 with particular attention to Section 21151.8). As required by Education Code Section 17213, the written findings of the environmental impact report or negative declaration must include a statement verifying that the site to be acquired for school purposes is not currently or formerly a hazardous, acutely hazardous substance release, or solid waste disposal site or, if so, that the wastes have been removed. Also, the written findings must state that the site does not contain pipelines which carry hazardous wastes or substances other than a natural gas supply line to that school or neighborhood. If hazardous air emissions are identified, the written findings must state that the health risks do not and will not constitute an actual or potential danger of public health of students or staff. If corrective measures of chronic or accidental hazardous air emissions are required under an existing order by another jurisdiction, the governing board shall make a finding that the emissions have been mitigated prior to occupancy of the school.

(i) Consult with, or demonstrate that the lead agency, if other than the district preparing the environmental impact report or negative declaration, has consulted with the appropriate city/county agency and with any air pollution control district or air quality management district having jurisdiction, concerning any facilities having hazardous or acutely hazardous air emissions within one–fourth of a mile of the proposed school site as required by Education Code Section 17213.

(j) For purposes of Environmental Site Assessment, school districts shall comply with Education Code sections 17210.1, 17213.1, and 17213.2.

(k) Follow the recommendations of the State Superintendent of Public Instruction report based upon the Department of Transportation, Division of Aeronautics, findings, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Section 17215.

(l) Follow the standards for school site selection in Section 14010 of this article.

(m) Conduct a public hearing by the governing board of the school district as required in Education Code Section 17211 to evaluate the property using the standards described in Section 14010 of this article. The school district's facility advisory committee may provide an evaluation of the proposed site to the governing board.

(n) Submit the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education.

(o) Certify there are no available alternative school district–owned sites for the project deemed usable for school purposes by the California Department of Education or certify that the school district intends to sell an available alternative school district–owned site and use the proceeds from the sale for the purchase of the new school site.

NOTE: Authority cited: Sections 17251(b) and 33031, Education Code. Reference: Sections 17070.50, 17072.12, 17210.1, 17211, 17212, 17213 and 17251(b), Education Code.

HISTORY

1. Renumbering and amendment of section 14010 to section 14011 and adoption of NOTE filed 11–12–93; operative 12–13–93 (Register 93, No. 46).
2. Amendment of section heading, section and NOTE filed 10–30–2000; operative 10–30–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

§ 14012. Procedures for Site Acquisition – Locally–Funded School Districts.

A locally–funded school district is defined as a school district with a project not applying for funding from any state program administered by the State Allocation Board as defined in Chapter 12.0 (commencing with Section 17000) or Chapter 12.5 (commencing with Section 17070.10) of the Education Code. A locally–funded school district, before acquiring title to real property for school use, shall:

5. Editorial correction of HISTORY 4 (Register 95, No. 23).

§ 57101. Purpose.

HISTORY

Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57120. Basic Guidelines.

HISTORY

1. Repealer of Article 2 heading and Section 57120 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57121. Application.

(a) When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (section 15080, title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long–range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) The Chancellor shall require that an Initial Study, pursuant to section 15080, title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information.

(d) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (section 15023, title 14, California Administrative Code); Negative Declaration (section 15083, Title 14, California Administrative Code); or Notice of Completion (section 15085(c), title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 23).

§ 57140. Procedures.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Section 71091, Education Code; Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of article 3 heading and new NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 23).

Subchapter 3. District Funded Construction Projects

§ 57150. Purpose.

The purpose of these regulations is to provide basic definitions, principles, and standards for use by the Chancellor of the California Community Colleges in considering any district–funded construction project subject to the requirements of section 81837 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. New chapter 3 (sections 57150–57158, not consecutive) filed 10–30–80; effective thirtieth day thereafter (Register 80, No. 44).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 57152. Definitions.

(a) "Capital Outlay Project" includes purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing.

(b) "Construction Project" includes new construction, alteration, and extension or betterment of existing structures.

(c) "State–Funded Project" means a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code, and for which a district requests or receives State funding assistance.

(d) "District–Funded Project" means a capital outlay project subject to the provisions of section 81837 of the Education Code for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility.

(e) "Five–Year Construction Plans" means a plan for capital construction for community college purposes of a community college district for the five–year period commencing with the next proposed year of funding.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57154. Application.

In each case, the application for approval of plans for a district–funded project shall be accompanied by the plans and full, complete and accurate take–off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57156. Review.

The review and evaluation of plans for a district–funded project by the Chancellor, shall include the following elements:

(a) Review and evaluate each district–funded project with reference to the elements of the capital construction program specified in Education Code section 81821.

(b) The review and evaluation shall be directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plans and where applicable, the standards as adopted by the Board of Governors.

Exhibit 8
Title 14, California Code of Regulations Sections Cited

(d) Proposed land use of the parcel and when the change in land use will occur.

(e) The amount of the cancellation or abandonment fee and the basis for its calculation, including how the valuation of the land pursuant to Subsections 51283(a) or 51061 was determined. A statement of the conditions shall be submitted for partial waivers.

(f) A narrative fully explaining the basis for cancellation or abandonment, including approved findings and a detailed summary of substantial evidence to support each finding, and the reason or reasons for determining that a waiver of the cancellation or abandonment fee is in the public interest pursuant to Sections 51283(c)(2) or 51061 of the Government Code.

NOTE: Authority cited: Sections 16144, 16154 and 65570, Government Code. Reference: Sections 51061 and 51283, Government Code.

HISTORY

1. Amendment of section and new NOTE filed 5–19–2000; operative 6–18–2000 (Register 2001, No. 3).

Chapter 2.5. Dredging Projects in San Francisco Bay

NOTE: Authority cited: Section 162, Harbors and Navigation Code.

HISTORY

1. New Chapter 2.5, Articles 1–5 (Sections 14200–14272, not consecutive) filed 12–19–75; effective thirtieth day thereafter (Register 75, No. 51).
2. Repealer of Chapter 2.5 (Article 1–5, Sections 14200–14272, not consecutive) filed 1–7–82; effective thirtieth day thereafter (Register 82, No. 2).

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

(State EIR Guidelines)

(Originally Printed 2–10–73)

Article 1. General

§ 15000. Authority.

The regulations contained in this chapter are prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 2108–3. Additional information may be obtained by writing:

SECRETARY FOR RESOURCES
ROOM 1311, 1416 NINTH STREET
SACRAMENTO, CA 95814

These Guidelines are binding on all public agencies in California.

[The next page is 665.]

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code; *City of Santa Ana* v. *City of Garden Grove*, (1979) 100 Cal. App. 3d 521.

HISTORY

1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2–7–73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).
2. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15001. Short Title.

These Guidelines may be cited as the "State CEQA Guidelines." Existing references to the "State EIR Guidelines" shall be construed to be references to the "State CEQA Guidelines."

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083 and 21087, Public Resources Code.

HISTORY

1. New section filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
2. Amendment filed 1–7–82; effective thirtieth day thereafter (Register 82, No. 2).
3. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15002. General Concepts.

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(b) Governmental Action. CEQA applies to governmental action. This action may involve:

(1) Activities directly undertaken by a governmental agency,

(2) Activities financed in whole or in part by a governmental agency, or

(3) Private activities which require approval from a governmental agency.

(c) Private Action. Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.

(d) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. See Section 15378.

(e) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. See Section 15004.

(f) Environmental Impact Reports and Negative Declarations. An environmental impact report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.

(1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. See Section 15064(a)(1).

(2) When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR. See Section 15070.

(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. See Section 15382. Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. See Section 15091.

(h) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project could cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

(1) Changing a proposed project;

(2) Imposing conditions on the approval of the project;

(3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;

(4) Choosing an alternative way of meeting the same need;

(5) Disapproving the project;

(6) Finding that changes in, or alterations, the project are not feasible.

(7) Finding that the unavoidable, significant environmental damage is acceptable as provided in Section 15093.

(i) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." See Section 15357.

(1) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial," and CEQA does not apply. See Section 15369.

(2) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another. See Section 15268.

(j) Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project. See Sections 15073, 15086, 15087 and 15088.

(k) Three Step Process. An agency will normally take up to three separate steps in deciding which document to prepare for a project subject to CEQA.

(1) In the first step the lead agency examines the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may prepare a notice of exemption. See Sections 15061 and 15062.

(2) If the project is not exempt, the lead agency takes the second step and conducts an initial study (Section 15063) to determine whether the project may have a significant effect on the environment. If the initial study shows that there is no substantial evidence that the project may have a significant effect, the lead agency prepares a negative declaration. See Sections 15070 et seq.

(3) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR. See Sections 15080 et seq.

(*l*) Certified Equivalent Programs. A number of environmental regulatory programs have been certified by the Secretary of the Resources Agency as involving essentially the same consideration of environmental issues as is provided by use of EIRs and negative declarations. Certified programs are exempt from preparing EIRs and negative declarations but use other documents instead. Certified programs are discussed in Article 17 and are listed in Section 15251.

(m) This section is intended to present the general concepts of CEQA in a simplified and introductory manner. If there are any conflicts between the short statement of a concept in this section and the provisions of other sections of these guidelines, the other sections shall prevail.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code; *No Oil, Inc.* v. *City of Los*

Angeles, 13 Cal. 3d 68 (1974); *Running Fence Corp.* v. *Superior Court*, 15 Cal. App. 3d 400 (1975).

History

1 New section filed 5–8–80; effective thirtieth day thereafter (Register 80, No.

endment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).

3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15003. Policies.

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable e of the statutory language. (*Friends of Mammoth v. Board of Super-*, 8 Cal. 3d 247.)

(g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

(h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)

(i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good–faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692)

(j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. (*Laurel Heights Improvement Assoc. v. Regents of U.C.* (1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553)

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).
4. New subsections (g)–(j) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

)04. Time of Preparation.

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Mount Sutro Defense Committee* v. *Regents of the University of California*, (1978) 77 Cal. App. 3d 20.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsections (b)(2)–(b)(2)(B), subsection renumbering, amendment of subsection (c), and amendment of Note filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15005. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 75, No. 1.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).

§ 15006. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of lead agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15083)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(*l*) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15152)

(n) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic environmental impact reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing environmental impact reports in plain language. (15140)

(r) Following a clear format for environmental impact reports. (15120)

(s) Emphasizing the portions of the environmental impact report that are useful to decision–makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on environmental impact reports as specific as possible. (15204)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21083, Public Resources Code.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 80, No. 19.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Amendment of subsections (g), (m) and (u) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15007. Amendments.

(a) These guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content requirements in guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the guidelines beginning with the earlier of the following two dates:

(1) The effective date of the agency's procedures amended to conform to the new guideline amendments; or

(2) The 120th day after the effective date of the guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the guidelines beginning with the effective date of the guideline amendments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21087, Public Resources Code; *Stevens* v. *City of Glendale*, 125 Cal. App. 3d 986.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 2. General Responsibilities

§ 15020. General.

Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the lead agency to accomplish. For example, a lead agency is responsible for the adequacy of its environmental documents. The lead agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21082.1, Public Resources Code; *Russian Hill Improvement Association* v. *Board of Permit Appeals*, 44 Cal. App. 3d 158 (1975).

HISTORY

1. Repealer of Article 2 (Sections 15005 and 15006) and new Article 2 (Sections 15020–15025) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 75, No. 1; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives.

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the

agency decides to approve a project that will cause one or more significant effects on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21081, Public Resources Code; *Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15022. Public Agency Implementing Procedures.

(a) Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these guidelines.

(2) Conducting initial studies.

(3) Preparing negative declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(9) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA.

(b) Any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district.

(c) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(d) In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21100.2 and 21151.5, Public Resources Code.

§ 15023. Office of Planning and Research (OPR).

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources. People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 30 days after receiving a notice of preparation.

(f) OPR shall resolve disputes as to which agency is the lead agency for a project.

(g) OPR shall receive and file all notices of completion, determination, and exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.4, 21083, 21086, 21087, 21108 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (e) and new subsection (g) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15024. Secretary for Resources.

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices required by certified state environmental regulatory programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.5, 21083, 21084, 21086, 21087, 21088 and 21152, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15025. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.

(3) Preparing a negative declaration or EIR.

(4) Determining that a negative declaration has been completed within a period of 105 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) The decisionmaking body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082, Public Resources Code; *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

§ 15040. Authority Provided by CEQA.

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, Etc., Dist.* v. *Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F.* v. *Mathews*, 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors* v. *City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY

1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15041. Authority to Mitigate.

Within the limitations described in Section 15040:

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi* (1978) 83 Cal. App. 3d 707; and *Laurel Hills Homeowners Assn. v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515.

HISTORY

1. Amendment of first paragraph, subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County*, 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill*, 121 Cal. App. 3d 203.

§ 15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill*, (1981) 121 Cal. App. 3d 203.

§ 15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15045. Fees.

(a) For a project to be carried out by any person or entity other than the lead agency, the lead agency may charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable under this section.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 4. Lead Agency

§ 15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes may be found in Title 14, California Administrative Code, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15052 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Administrative Code, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

§ 15060. Preliminary Review.

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7–13–83; effective thirtieth day thereafter (Register 83,

No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

3. New subsection (c)(3) and subsection renumbering filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a)(2), new subsection (b)(3) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the proj-

ect, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1)(A) Except as otherwise required by Section 15065, a change in the environment is not a significant effect if the change complies with a standard that meets the definition in subsection (h)(3).

(B) If there is a conflict between standards, the lead agency shall determine which standard is appropriate for purposes of this subsection based upon substantial evidence in light of the whole record.

(C) Notwithstanding subsection (h)(1)(A), if the lead agency determines on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(2) In the absence of a standard that satisfies subsection (h)(1)(A), the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(3) For the purposes of this subsection a "standard" means a standard of general application that is all of the following:

(A) a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(B) adopted for the purpose of environmental protection;

(C) adopted by a public agency through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency;

(D) one that governs the same environmental effect which the change in the environment is impacting; and,

(E) one that governs within the jurisdiction where the project is located.

(4) This definition includes thresholds of significance adopted by lead agencies which meet the requirements of this subsection.

(i)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. "Probable future projects" are defined in Section 15130.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over

the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

A lead agency may determine that the incremental impacts of a are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. Such de minimus incremental impacts, by themselves, do not trigger the obligation to prepare an EIR. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)–(i)(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending subsections (g), (h)(1)(A), (h)(1)(C) and (h)(2) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an 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.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) 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 for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the 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.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state–owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to de-

termine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code § 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission." Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084 and 21084.1, Public Resources Code; and *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non–compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short–term environmental goals to the disadvantage of long–term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects as defined in Section 15130.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code; and *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have preared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21064, 21064.5, 21080(c) and 21082.1, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp.* v. *Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060–15069.8) and new Article 6 (Sections 15070–15075) filed 7–13–83; designated effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subsection (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6 and 21151.8, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative dec-

laration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091 and 21092.5, Public Resources Code; *Plaggmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; and *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1 and 21096, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(f), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.

(a) After deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved, the lead agency shall file a notice of determination. For projects with phases, the lead agency shall file a notice of determination after deciding to carry out or approve each phase.

(b) The notice of determination must include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with OPR.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires a discretionary approval from any state agency, the local lead agency shall also file with OPR.

(e) All notices filed pursuant to this section shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt. Each notice shall remain posted for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than 9 months. The filing of the notice of determination and the posting on a list of such notices starts a 30–day statute of limitations on court challenges to the approval under CEQA.

(f) Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (f) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15081.5. EIRs Required by Statute.

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse–derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subsection (1) of the subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off–site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manges hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap–leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University, University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.09, 21083.8, 21083.8.1, 21151.1 and 21151.7, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15 ' or 7 1/2 ' topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix I. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending subsection (a)(2) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issue found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

§ 15083.5. City or County Consultation with Water Agencies.

This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.

(a) This guideline shall apply only to projects which meet all of the following criteria:

(1) The project consists of any of the following activities for which an application has been submitted to a city or county:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.

(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.

(D) A hotel, motel or both with more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park intended to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area

(F) Any mixed–use project that would demand an amount of wat equal to, or greater than, the amount of water needed to serve a 500–dwelling unit project.

(2) As part of approval of the project, any of the following are required:

(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated [illegible]tion density or building intensity to provide for additional devel[illegible]

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subsection (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single–dry, and multiple–dry water years as included in the 20–year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within [illegible]lotted time, the lead agency may assume, unless there has been a [illegible]t for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21151.9, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the [illegible]agency. The required contents of a draft EIR are discussed in Article [illegible]ginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

(e) Public agencies are encouraged to make copies of notices of completion filed pursuant to this section available in electronic format on the Internet.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a) and new subsection (e) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and

public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non–attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect repealing subsection (a)(6) and renumbering subsections filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. This notice shall be given as provided under Section 15105. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the Clearinghouse.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21153 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
3. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be

addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

e response to comments may take the form of a revision to the dra. .t or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

§ 15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the im- a level of insignificance.

feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. Following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When the EIR is substantially revised and the entire EIR is recircu- the lead agency may require that reviewers submit new comments ed not respond to those comments received during the earlier circu- on period. The lead agency shall advise reviewers, either within the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR. The lead agency shall send directly to every agency, person, or organization that commented on the prior draft EIR a notice of the recirculation specifying that new comments must be submitted.

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. New subsections (f)–(g) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

§ 15090. Certification of the Final EIR.

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non–elected decision–making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision–making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082.1, 21100 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22)

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a

brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council* (1978) 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus* (1981)118 Cal. App. 3d 348; *Sierra Club* v. *Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth* v. *City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; San *Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision–making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco* (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsections (b) and (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) A notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 9 months.

(e) A notice of determination filed with OPR is available for public spection and shall be posted for a period of at least 30 days.

(f) The filing of the notice of determination and the posting of such notice starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection reletter-ing, and amendment of newly designated subsection (f) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will ' 'hen acting as a responsible agency.

Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the ' 'priateness of using a negative declaration, or on additional alterna- 'r mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15097. Mitigation Monitoring or Reporting.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan–level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan–level documents. The annual report on general plan status required pursuant

to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix K and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision–making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision–making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of* 9 Cal. App. 3d 830.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (d) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the EIR as provided in Section 15090 within one year after the date the lead agency accepted the application as complete. Lead agency procedures may provide that the one–year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one–year time limit for completing and certifying a final EIR or the 105–day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR–EIS or combined negative declaration–finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR–EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Repealer of subsection (b)(1), subsection renumbering, amendment of subsection (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsection (d) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the

decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposal if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision–making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment of subsections (b) and (d)(1)(B), new subsection (d)(1)(C) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area–wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth–Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)–(4), amendment of subsection (d)(5), new subsections (d)(5)(A)–(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (e), subsection relettering, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of first paragraph, repealer and new subsections (a)–(f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short–term and long–term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the

project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth–Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. Of Calif* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally–binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted 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, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1. *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of ject objectives, or would be more costly.

election of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non–approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations

that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(4) An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

3. Lead agencies should define the geographic scope of the area a fected by the cumulative effect and provide a reasonable explanation fo the geographic limitation used.

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant [illegible]. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project–by–project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section15183(j).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. [illegible]y of Stanislaus* (1994) 27 Cal.App.4th 713; and *Fort Mojave Indian Tribe Dept. Of Health Services* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR;

and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or

(C) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Housing/neighborhood commercial facilities in an urbanized area (Section 15181).

(8) Projects consistent with community plan, general plan, or zoning (Section 15183).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100 and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

§ 15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21096, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160-15170) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, text and NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subsection (c) and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d

HISTORY

1. Amendment of section heading, text and NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subection (b) and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

§ 15167. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795 (1973).

§ 15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15170. Joint EIR–EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5. Master Environmental Impact Report

§ 15175. Master EIR.

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has be closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accord[illegible]with applicable provisions of law to generate the revenue necess[illegible]repare a Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21156, 21157 and 21089, Public Resources Code.

HISTORY

1. New article 11.5 (sections 15175–15175.5) and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15176. Contents of a Master EIR.

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office–commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or schedul[illegible]- other device at the time of preparing the Master EIR.

. description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel–specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (b)(3) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15177. Subsequent Projects Within the Scope of the MEIR.

After a Master EIR has been prepared and certified, subsequent [illegible]cts which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subsection (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project–specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21157, 21157.6 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15178. Subsequent Projects Identified in the MEIR.

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project–specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179. Limitations on the Use of the Master EIR.

The certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179.5. Focused EIRs and Small Projects.

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed–use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one–half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated through the preparation of a subsequent environmental impact report or a supplemental environmental impact report.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21158.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 12. Special Situations

§ 15180. Redevelopment Projects.

(a) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY

1. New Article 12 (Sections 15190–15192) filed 1–6–76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4–2–76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7–13–83; effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously ...ed EIR to all persons who had submitted a written request for no... d shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a further, specific finding as to:

Whether there would be any significant physical effects on existing ...es and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

§ 15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the ...ption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project–specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

(3) Are potentially significant off–site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously

adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density–related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site–specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re–examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

§ 15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

§ 15186. School Facilities.

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials,wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will consult with other agencies in this regard.

(b) When a project located within one–fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(2) Notify the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(1) The negative declaration or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This do[illegible]t include a natural gas pipeline used only to supply the school or n[illegible]rhood.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school board makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to [illegible]s who would attend or be employed at the proposed school. When [illegible]ool district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.

(e) The following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. §66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(4) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(5) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(6) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

[illegible]187. Environmental Review of New Rules and Regulations.

(a) At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21159 and 21159.4, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15188. Focused EIR for Pollution Control Equipment.

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

(1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

(2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

(3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project-specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth-inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.1, Public Resources Code.

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HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15189. Compliance with Performance Standard or Treatment Requirement Rule or Regulation.

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project–specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.2, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15190. Deadlines for Compliance with Sections 15188 and 15189.

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.3, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 13. Review and Evaluation of EIRs and Negative Declarations

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. New Article 13 (Sections 15201–15203) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

HISTORY

1. Amendment of subsection (e) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specfic effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency should focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21081.6, 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812–3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) The number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsection (a) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento–San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference. Section 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (b)(5) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. New subsection (a)(1) designator and new subsection (a)(2) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (b)(4)(B) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

§ 15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

§ 15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

§ 15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

HISTORY

1. New Article 14 (Sections 15220–15228) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

§ 15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR–EIS or negative declaration–finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

§ 15223. Consultation with Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

§ 15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

§ 15225. Circulation of Documents.

(a) Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.8 and 21092, Public Resources Code.

HISTORY

1. New subsection (a) designator, new subsections (b)–(b)(2), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings,

(d) Joint environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

§ 15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21101, Public Resources Code.

228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

§ 15229. Baseline Analysis for Military Base Reuse Plan EIRs.

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate–income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no-project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter–Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 15. Litigation

§ 15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY

1. New Article 15 (Sections 15230–15233) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15231. Adequacy of EIR or Negative Declaration for Use by Lead and Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

HISTORY

1. Amendment of section heading filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

§ 15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for noncompliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provision of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

§ 15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

SECRETARY FOR RESOURCES
ATTENTION: CALIFORNIA EIR MONITOR
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21088, Public Resources Code.

HISTORY

1. New Article 16 (Section 15240) filed 7–13–83; effective thirtieth day thereaf. (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 17. Exemption for Certified State Regulatory Programs

§ 15. . General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New Article 17 (Sections 15250–15253) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and gra[illegible]g of coastal development permits under the California Coastal Act of [illegible]Division 20 (commencing with Section 30000) of the Public Resou[illegible]Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg–Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer–Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

[illegible]The adoption, amendment, or repeal of regulations for standards d[illegible]with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The regulations of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

(k) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren–Alquist Act, commencing with Public Resources Code Section 25500.

(*l*) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(m) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(n) The program of the Delta Protection Commission involving the preparation and adoption of a Resource Management Plan for the Sacramento–San Joaquin Delta (Pub. Resources Code § 29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code § 29763.5).

(o) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(p) The program of the Department of Fish and Game implementing the incidental take permit application process under the California Endangered Species Act ("CESA"), Fish and Game Code sections 2080 and 2081, and specifically the regulation governing the Department of Fish and Game's role as a "lead agency" when issuing incidental take permits, found at California Code of Regulations, Title 14, section 783.5(d).

(q) The regulatory program of the Department of Fish and Game for review and approval of voluntary local programs for routine and ongoing agricultural activities, as authorized by the California Endangered Species Act, Fish and Game Code section 2086.

NOTE: Authority cited: Sections 21083 and 21080.5, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New subsection (m) filed 3–1–89; operative 3–31–89 (Register 89, No. 10).
2. New subsection (n) filed 11–9–94; operative 12–9–94 (Register 94, No. 45).
3. New subsection (o) filed 8–27–98; operative 8–27–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
4. New subsection (p) and amendment of NOTE filed 3–29–99; operative 3–29–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 14).
5. Change without regulatory effect amending subsection (i) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
6. New subsection (q) filed 3–4–2003; operative 3–4–2003 pursuant to Public Resources Code section 21083 (Register 2003, No. 10).

§ 15252. Substitute Document.

The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(a) A description of the proposed activity, and

(b) Either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

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§ 15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in Subsection (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

[The next page is 709.]

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in Subsection (b). Where a certified agency does not meet the criteria in Subsection (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

Article 18. Statutory Exemptions

§ 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY

1. New Article 18 (Sections 15260–15277) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on–going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

§ 15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

§ 15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 13389, Water Code.

§ 15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 51119, Government Code.

§ 15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long–range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long–range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal

programs and long–range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

§ 15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

§ 15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

§ 15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case–by–case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

§ 15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long–term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short–term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section180.2 of the Streets and Highways Code, Section 180 et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15270. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation f the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

§ 15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

§ 15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

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§ 15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3)Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra–city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

§ 15274. Family Day Care Homes.

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in–home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in–home care for up to eight children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Change without regulatory effect amending section filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high–occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

§ 15276. Transportation Improvement and Congestion Management Programs.

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(13), Public Resources Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

§ 15278. Application of Coatings.

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10–day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Chapter 1131, Statutes of 1993, Section 1.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15279. Housing for Agricultural Employees.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined below, provided the development is either:

(1) Affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, there is no public financial assistance for the development project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower–income households for a period of at least 15 years; or

(2) Affordable to low and moderate–income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government

Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, there is public financial assistance for the project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to low and moderate-income households for a period of at least 15 years.

(b) The development must also meet all the following criteria:

(1) It is consistent with the applicable city, county, or city and county general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning, as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) If the project is proposed in an urbanized area, it does not exceed 45 dwelling units, or if it consists of dormitories, barracks or other group living facilities houses not more than 45 agricultural employees, and its site is adjacent on at least two sides to land that has been previously developed.

(4) If the project is proposed in a nonurbanized area, its site is zoned for general agricultural use and the project consists of not more than 20 dwelling units or, if it consists of dormitories, barracks or other group living facilities, it houses not more than 20 agricultural employees.

(5) Its site is not more than five acres in area, except that a project located in an area with a population density of at least 1000 persons per square mile shall not be more than two acres in area.

(6) Its site is, or can be, adequately served by utilities.

(7) Its site has no value as wildlife habitat.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962 of the Government Code.

(9) It will not involve the demolition of, or any substantial adverse change in, any structure that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(c) As used in this section, "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(d) As used in this section, "urbanized area" means either of the following:

(1) an area with a population density of at least 1000 persons per square mile; or

(2) an area with a population density of less than 1000 persons per square mile that is identified as an urban area in the general plan adopted by the applicable city, county, or city and county and was not designated at the time the application was deemed complete as an area reserved for future urban growth.

(e) This section does not apply if the public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15280. Lower-Income Housing Projects.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area, provided that it is either:

(1) Affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(b) The development must also meet all the following criteria:

(1) It is consistent with the local jurisdiction's general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) Its site has been previously developed or is currently developed with urban uses, or the immediately contiguous properties surrounding the site are or have been previously developed with urban uses.

(4) Its site is not more than two acres in area.

(5) Its site is, or can be, adequately served by utilities.

(6) Its site has no value as wildlife habitat.

(7) It will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962.5 of the Government Code, and the site has been subject to an assessment by a California registered environmental assessor to determine both the presence of hazardous contaminants, if any, and the potential for exposure of site occupants to significant health hazards from nearby properties and activities.

(c) For purposes of this section, "urbanized area" means an area that has a population density of at least 1000 persons per square mile.

(d) If hazardous contaminants are found on the site, they must be removed or any significant effects mitigated to a level of insignificance in order to apply this exemption. If a potential for exposure to significant health hazards from nearby properties and activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance in order to apply this exemption. Any removal or mitigation to insignificance must be completed prior to any residential occupancy of the project.

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.14, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (a) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15281. Air Quality Permits.

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.24, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subsection summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries

below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right–of–way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The construction of housing or neighborhood commercial facilities in an urbanized area pursuant to the provisions of Section 21080.7 of the Public Resources Code.

(f) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(g) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(h) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(i) The adoption of an ordinance regarding second units in a single–family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(j) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(k) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(*l*) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(m) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code § 29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(n) Minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(o) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(p) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(q) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(r) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(s) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(t) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(u) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(v) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(w) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735 and 44203(g), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15283. Housing Needs Allocation.

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65584, Government Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15284. Pipelines.

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

(1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one–half mile at a time.

(2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.

(4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.

(5) Project activities take place within an existing right–of–way and that right–of–way will be restored to its pre–project condition upon completion of the project.

(6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

ıines that a project meets all of the cri-
, the party undertaking the project shall

ɔonsible and trustee agencies, as well as any
.nental, public health protection, or emergen-
ıe lead agency's invocation of this exemption.
project to the last known name and address of
.ndividuals who have previously requested such
public in the affected area by at least one of the fol-

, at least one time in a newspaper of general circulation
ɛed by the proposed project. If more than one area is af-
ıce shall be published in the newspaper of largest circula-
ıong the newspapers of general circulation in those areas.
.ng of notice on and off site in the area where the project is to
ɹ.
ıirect mailing to the owners and occupants of contiguous property
. on the latest equalized assessment roll.
ıotice shall include a brief description of the proposed project and
ıocation, and the date, time, and place of any public meetings or hear-
ıgs on the proposed project. This notice may be combined with the pub-
lic notice required under other law, as applicable, but shall meet the preceding minimum requirements.

(3) In the case of private rights–of–way over private property, receive from the underlying property owner permission for access to the property.

(4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.23, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15285. Transit Agency Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken on or after July 1,1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short–term investments, and unrestricted short–term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080 and 21080.32, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 19. Categorical Exemptions

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will

have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464.

HISTORY

1. Amendment of subsection (b), new subsections (d)–(f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15300.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15300.4. Application by Public Agencies.

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15300.2.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all–inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly–owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off–premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single–family residences into common–interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(*l*) Demolition and removal of individual small structures listed in this subsection;

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single–family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21084 and 21084.2, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of subsections (c), (k), (*l*)(1)–(3) and (o), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (h) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15302. Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15303. New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:

(a) One single–family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single–family residences may be constructed or converted under this exemption.

(b) A duplex or similar multi–family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.

(c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21084 and 21084.2, Public Resources Code.

HISTORY

1. New subsection (f) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15304. Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist–Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

(b) New gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

(h) The creation of bicycle lanes on existing rights–of–way.

(i) Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption shall apply to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (b) and new subsection (i) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15305. Minor Alterations in Land Use Limitations.

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15306. Information Collection.

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15307. Actions by Regulatory Agencies for Protection of Natural Resources.

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15308. Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction

activities and relaxation of standards allowing environmental degradation are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code; *International Longshoremen's and Warehousemen's Union* v. *Board of Supervisors*, (1981) 116 Cal. App. 3d 265.

§5309. Inspections.

Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15310. Loans.

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15311. Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On–premise signs;

(b) Small parking lots;

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15312. Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines; or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15313. Acquisition of Lands for Wildlife Conservation Purposes.

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15314. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15315. Minor Land Divisions.

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15316. Transfer of Ownership of Land in Order to Create Parks.

Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21084, 21083.2, and 21084.1, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15317. Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15318. Designation of Wilderness Areas.

Class 18 consists of the designation wilderness areas under the California Wilderness System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15319. Annexations of Existing Facilities and Lots for Exempt Facilities.

Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre–zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15320. Changes in Organization of Local Agencies.

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15321. Enforcement Actions by Regulatory Agencies.

Class 21 consists of::

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement.

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction.

(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15322. Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15323. Normal Operations of Facilities for Public Gatherings.

Class 23 consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but are not limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools, and amusement parks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15324. Regulations of Working Conditions.

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

(a) Employee wages,

(b) Hours of work, or

(c) Working conditions where there will be no demonstrable physical changes outside the place of work.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15325. Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources.

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats.

(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.

(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

(e) Acquisition, sale, or other transfer to preserve historical resources.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15326. Acquisition of Housing for Housing Assistance Programs.

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15327. Leasing New Facilities.

(a) Class 27 consists of the leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:

(1) Shall be in conformance with existing state plans and policies and with general, community, and specific plans for which an EIR or negative declaration has been prepared,

(2) Shall be substantially the same as that originally proposed at the time the building permit was issued,

(3) Shall not result in a traffic increase of greater than 10% of front access road capacity, and

(4) Shall include the provision of adequate employee and visitor parking facilities.

(b) Examples of Class 27 include, but are not limited to:

(1) Leasing of administrative offices in newly constructed office space.

(2) Leasing of client service offices in newly constructed retail space.

(3) Leasing of administrative and/or client service offices in newly constructed industrial parks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15328. Small Hydroelectric Projects at Existing Facilities.

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

(a) The capacity of the generating facilities is 5 megawatts or less,

(b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:

(1) Rate and volume of flow,

(2) Temperature,

(3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life, and

(4) Timing of release.

(c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river.

(d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment.

(e) There will be no significant upstream or downstream passage of fish affected by the project.

(f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure.

(g) The project will not cause violations of applicable state or federal water quality standards.

(h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places, and

(i) Construction will not occur in the vicinity of any endangered, rare, or threatened species.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Amendment of subsection (i) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15329. Cogeneration Projects at Existing Facilities.

Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in this section.

(a) At existing industrial facilities, the installation of cogeneration facilities will be exempt where it will:

(1) Result in no net increases in air emissions from the industrial facility, or will produce emissions lower than the amount that would require review under the new source review rules applicable in the county, and

(2) Comply with all applicable state, federal, and local air quality laws.

(b) At commercial and industrial facilities, the installation of cogeneration facilities will be exempt if the installation will:

(1) Meet all the criteria described in Subsection (a),

(2) Result in no noticeable increase in noise to nearby residential structures,

(3) Be contiguous to other commercial or institutional structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15330. Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances.

Class 30 consists of any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less. No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit, with the exception of low temperature thermal desorption, or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site. Examples of such minor cleanup actions include but are not limited to:

(a) Removal of sealed, non–leaking drums or barrels of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;

(b) Maintenance or stabilization of berms, dikes, or surface impoundments;

(c) Construction or maintenance of interim or temporary surface caps;

(d) Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;

(e) Excavation and/or offsite disposal of contaminated soils or sludges in regulated units;

(f) Application of dust suppressants or dust binders to surface soils;

(g) Controls for surface water run–on and run–off that meets seismic safety standards;

(h) Pumping of leaking ponds into an enclosed container;

(i) Construction of interim or emergency ground water treatment systems;

(j) Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending first paragraph filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15331. Historical Resource Restoration/Rehabilitation.

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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15332. In-Fill Development Projects.

Class 32 consists of projects characterized as in–fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value, as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. New section filed 12–23–98; operative 12–23–98 pursuant to Public Resources Code section 21087 (Register 98, No. 52).

Article 20. Definitions

§ 15350. General.

The definitions contained in this article apply to terms used throughout the guidelines unless a term is otherwise defined in a particular section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. New Article 20 (Sections 15350–15387) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15351. Applicant.

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or

financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

§ 15352. Approval.

(a) "Approval" means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21065, Public Resources Code.

§ 15353. CEQA.

"CEQA" means the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21050, Public Resources Code.

§ 15354. Categorical Exemption.

"Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(10) and 21084, Public Resources Code.

§ 15355. Cumulative Impacts.

"Cumulative impacts" refer 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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083(b), Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397.

§ 15356. Decision–Making Body.

"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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003(b), Public Resources Code; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

§ 15357. Discretionary Project

"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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg–Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(a), Public Resources Code; *Johnson* v. *State of California* (1968) 69 Cal. 2d 782; *People* v. *Department of Housing and Community Development* (1975) 45 Cal. App. 3d 185; *Day* v. *City of Glendale* (1975) 51 Cal. App. 3d 817; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

§ 15358. Effects.

"Effects" and "impacts" as used in these guidelines are synonymous.

(a) Effects include:

(1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth–inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068 and 21100, Public Resources Code.

§ 15359. Emergency.

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(2), (3) and (4), Public Resources Code.

§ 15360. Environment.

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man–made conditions.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21060.5, Public Resources Code.

§ 15361. Environmental Documents.

"Environmental documents" means initial studies, negative declarations, draft and final EIRs, documents prepared as substitutes for EIRs and negative declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an initial study, negative declaration, or an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21080(b), 21080.5, 21108 and 21152, Public Resources Code.

§ 15362. EIR—Environmental Impact Report.

"EIR" or "environmental impact report" means a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents of an EIR are discussed in Article 9, commencing with Section 15120 of these guidelines. The term "EIR" may mean either a draft or a final EIR depending on the context.

(a) Draft EIR means an EIR containing the information specified in Sections 15122 through 15131.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15132.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15363. EIS—Environmental Impact Statement.

"EIS" or "Environmental Impact Statement" means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). NEPA uses the term EIS in the place of the term EIR which is used in CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; 43 U.S.C.A. 4322(2)(c).

§ 15364. Feasible.

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5 and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982.

§ 15365. Initial Study.

"Initial study" means a preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the initial study is discussed in Article 5, commencing with Section 15060.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21080.2, 21080.3 and 21100, Public Resources Code.

§ 15366. Jurisdiction by Law.

(a) "Jurisdiction by law" means the authority of any public agency:

(1) To grant a permit or other entitlement for use,

(2) To provide funding for the project in question, or

(3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

(1) The site of the project;

(2) The area in which the major environmental effects will occur; and/or

(3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15381, or the lead agency, see Section 15367.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104 and 21153, Public Resources Code.

§ 15367. Lead Agency.

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 15051.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15368. Local Agency.

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21062 and 21151, Public Resources Code.

§ 15369. Ministerial.

"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. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

§ 15369.5. Mitigated Negative Declaration.

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21064.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15370. Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21100(c), Public Resources Code.

§ 15371. Negative Declaration.

"Negative declaration" means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15372. Notice of Completion.

"Notice of completion" means a brief notice filed with the OPR by a lead agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15373. Notice of Determination.

"Notice of determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(a) and 21152, Public Resources Code.

§ 15374. Notice of Exemption.

"Notice of exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(b) and 21152(b), Public Resources Code.

§ 15375. Notice of Preparation.

"Notice of preparation" means a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15376. Person.

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies or political subdivisions of such entities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21066, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15377. Private Project.

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or

(b) A lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

§ 15378. Project.

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel–related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(3) The submittal of proposals to a vote of the people of the state or of a particular community. (*Stein* v. *City of Santa Monica*, (1980) 110 Cal. App. 3d 458);

(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(5) Organizational or administrative activities of governments which are political or which are not physical changes in the environment (such as the reorganization of a school district or detachment of park land).

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under Subsection (a)(1) or as a development proposal which will be subject to several governmental approvals under Subsections (a)(2) or (a)(3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code; *Kaufman and Broad–South Bay, Inc. v. Morgan Hill Unified School District*, (1992) 9 Cal.App.4th 464; and *Fullerton Joint Union High School District v. State Board of Education*, (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648.

HISTORY

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsections (b)(1)–(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15379. Public Agency.

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21063, Public Resources Code.

§ 15380. Endangered, Rare or Threatened Species.

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Code of Regulations; or

(2) Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subsection (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subsection (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21001(c), Public Resources Code.

HISTORY

1. Amendment of section heading, subsections (c), (c)(1) and (d), and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15381. Responsible Agency.

"Responsible agency" means a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2 and 21167.3, Public Resources Code.

§ 15382. Significant Effect on the Environment.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068, 21083, 21100 and 21151, Public Resources Code; *Hecton* v. *People of the State of California*, 58 Cal. App. 3d 653.

HISTORY

1. On November 23, 1986 the regulation (Title 14, § 895.1) became effective which clarifies the Board's regulatory interpretation of "effect" and "impact" as specified in CEQA (Public Resources Code § 21068 and § 21080.5(d)(2) and (3)) (Register 86, No. 4).

§ 15383. State Agency.

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15384. Substantial Evidence.

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21082.2, 21168 and 21168.5, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Running Fence Corp.* v. *Superior Court* (1975) 51 Cal. App. 3d 400; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15385. Tiering.

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site–specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site–specific EIR.

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15386. Trustee Agency.

"Trustee agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include: (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3 and 21080.4, Public Resources Code.

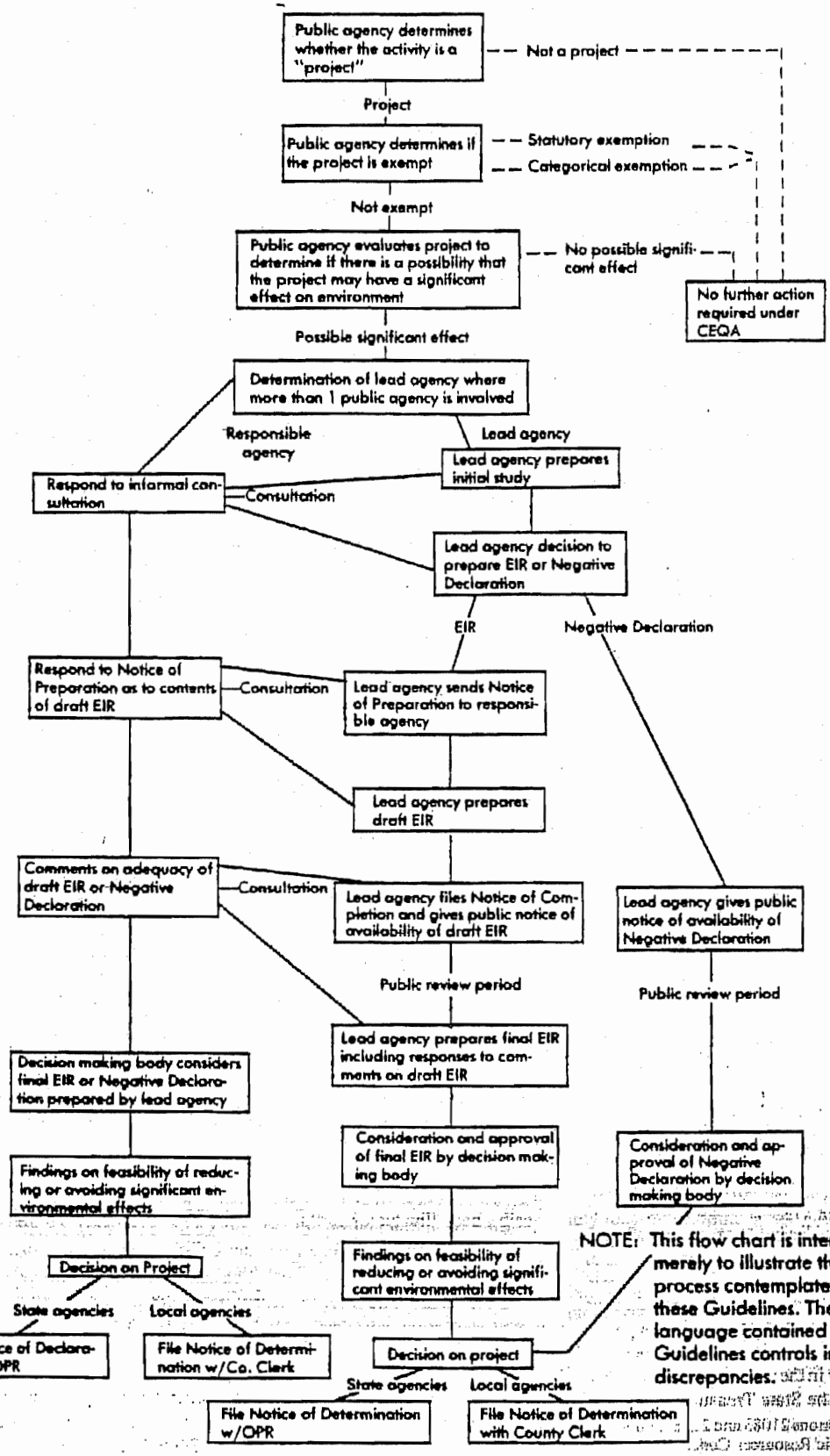
§ 15387. Urbanized Area.

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A lead agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301–3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.7, 21083 and 21084, Public Resources Code.

Appendix A

CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Amendment of Appendix A filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5). For prior history, see Registers 80, No. 19 and 73, No. 50.

APPENDIX B

AREAS OF SPECIAL EXPERTISE OF STATE DEPARTMENTS IN SUBJECTS OF ENVIRONMENTAL CONCERN

	FOOD AND AGRICULTURE		AERONAUTICS	CHP	CORPORATIONS	DMV	HCD	CALTRANS	REAL ESTATE	SAVINGS AND LOAN			HEALTH SERVICES	RESOURCES AGENCY	AIR RESOURCES BOARD	BCDC
1	1	Air quality and air pollution control	x	16		x							x x		x	
2	x	Chemical contamination and food products											x x			
3		Coastal areas, wetlands, estuaries, waterfowl refuges and beaches											7			26
4		Congestion in urban areas, housing and building displacement					x		x				8		24	
5	x	Disease control											x x			
6		Electric energy generation and supply											x x		x	
7		Environmental effects with special impact in low-income neighborhoods					x	x	x				9			
8	x	Flood plains and watersheds							x							
9	x	Food additives and food sanitation											x			
10	x	Herbicides											x x	x		
11		Historic and archaeological sites						x								
12	2	Human ecology											x x		x	
13	x	Microbiological contamination											x x			
14		Mineral land reclamation														
15		Natural gas energy development generation and supply														
16		Navigable airways	x										10		16	
17		Navigable waterways														25
18	x	Noise control and abatement	x	x									x			
19	x	Parks, forests, trees and outdoor recreation areas														25
20	x	Pesticides											x x	x		
21		Radiation and radiological health											x x	x		
22		Regional comprehensive planning	x				x	x	x	x			11		24	
23	x	Rodent control											x			
24	3	Sanitation and waste systems											x x			
25		Shellfish sanitation											x			
26	x	Soil and plant life, sedimentation, erosion, and hydrologic conditions														
27	x	Toxic materials						x					x			
28	4	Transportation and handling of hazardous materials		x		x							x x			
29	x	Water quality and water pollution control											x x			
30	5	Fish and wildlife											12			
31		Activities with special impact on regional jurisdictions											13			25
32		Water project formulation													24	
33		Geothermal energy													24	
34		Oil and petroleum development, generation and supply														
35		Statewide land use patterns														
36		Open Space policy													24	
37		Statewide overview—cumulative impact of separate projects						x								
38		Seismic Hazards					x									

	BOATING & WATERWAYS	COASTAL COMMISSION	CTRPA	COLORADO RIVER BOARD	CONSERVATION	ENERGY COMMISSION	FISH AND GAME	FORESTRY	PARKS AND RECREATION	SOLID WASTE MANAGEMENT BOARD	STATE LANDS DIVISION	STATE RECLAMATION BOARD	STATE WATER RESOURCES CONTROL BOARD	WATER RESOURCES	NATIVE AMERICAN HERITAGE COMMISSION	OFFICE OF PLANNING AND RESEARCH	
1 Air quality and air pollution control			27		x								x				
2 Chemical contamination and food products				14			x						x				
3 Coastal areas, wetlands, estuaries, waterfowl refuges and beaches	x	26	27	14	x		x		x		x		x	x			
4 Congestion in urban areas, housing and building displacement		26	27										21				
5 Disease control				14			x	22					x				
6 Electric energy generation and supply	x	26		14		x	x	23	x					x			
7 Environmental effects with special impact in low-income neighborhoods									19								
8 Flood plains and watersheds		26	27	14	x		x		x		x	20		x			
9 Food additives and food sanitation																	
10 Herbicides				14			x	22	x				x				
11 Historic and archaeological sites		26	27						x		x				x		
12 Human ecology		26	27				x		x								x
13 Microbiological contamination				14			x		x				x				
14 Mineral land reclamation		26	27		x		x		x		x						
15 Natural gas energy development generation and supply		26			x	x	13				x						
16 Navigable airways							16										
17 Navigable waterways	x	26	27	14			x				x	20					
18 Noise control and abatement							17										
19 Parks, forests, trees and outdoor recreation areas	x	26	27	14	x		x		x		x				x		
20 Pesticides							x	22	x				x	x			
21 Radiation and radiological health				14		x	x										
22 Regional comprehensive planning	x	26	27	14	x	x	x		x		x		x	x		x	
23 Rodent control							x	22	x								
24 Sanitation and waste systems		26		14	x		18			x			x	x			
25 Shellfish sanitation							x						x	x			
26 Soil and plant life, sedimentation, erosion, and hydrologic conditions		26	27	14	x		x		x		x		x	x			
27 Toxic materials				14			x		x	x			x				
28 Transportation and handling of hazardous materials					x	x							x	x			
29 Water quality and water pollution control	x	26	27	14	x	x	x						x	x			
30 Fish and wildlife		26	27	14			x		x				21				
31 Activities with special impact on regional jurisdictions		26	27	14			x		x			20		x			
32 Water project formulation	x			14			x	23	x			20	x	x			
33 Geothermal energy				14	x	x	x				x		21	x			
34 Oil and petroleum development, generation and supply		26			x	x	x				x		21				
35 Statewide land use patterns		26	27		x	x	x				x						x
36 Open Space policy		26	27		x		x								x		x
37 Statewide overview—cumulative impact of separate projects					x	x											x
38 Seismic Hazards		26	27		x	x								x			

Appendix B

Footnotes

No.

1. *Food and Agriculture*—Effects on plants and animals.
2. *Food and Agriculture*—Protection of food and fiber.
3. *Food and Agriculture*—Agricultural, dairy and feed lot systems.
4. *Food and Agriculture*—As pertains to transportation, handling, storage and decontamination of pesticides.
5. *Food and Agriculture*—Pesticide effects, predatory animal control, bird control.
6. *California Highway Patrol*—Enforcement of motor vehicle regulations.
7. *Health Services*—Beach sanitation, water pollution, solid waste and mosquito control.
8. *Health Services*—Pertains to health component.
9. *Health Services*—Most of these are strongly related to health.
10. *Health Services*—Pertains to noise.
11. *Health Services*—Pertains to personal and environmental health components.
12. *Health Services*—As it may pertain to human health hazards.
13. *Health Services*—Pertains to comprehensive health planning.
14. *Colorado River Board*—As pertains to the Colorado, New and Alamo Rivers.
15. *Fish and Game*—As field development and distribution systems may affect fish and wildlife.
16. *Fish and Game*—As may affect migrating and resident wildlife.
17. *Fish and Game*—As excessive noise may affect wildlife.
18. *Fish and Game*—As water quality may affect fish and wildlife.
19. *Parks and Recreation*—In impacted areas only.
20. *Reclamation Board*—In areas of Board's jurisdiction only—the Sacramento–San Joaquin Valley.
21. *State Water Resources Control Board*—As may pertain to water quality.
22. *Forestry*—With respect to forest land.
23. *Forestry*—(6) and (32)—As related to fire protection or State (fire protection) responsibility land.
24. *Air Resources Board*—(4), (22), (32), (33), and (36)—As may pertain to residential, commercial, industrial or transportation growth.
25. *San Francisco Bay Conservation and Development Commission*—(3), (17), (19), and (30)—With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. *California Coastal Commission*—(3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36)—With respect to effects within the California Coastal Zone.
27. *California Tahoe Regional Planning Agency*—With respect to effects in the Tahoe Basin.
28. *Native American Heritage Commission*—With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

HISTORY

1. Amendment of Appendix B filed 12–15–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1–1–77.
3. Amendment of Appendix B and Footnotes filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix C

Notice of Completion

State of California
Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

HISTORY

1. Amendment of Appendix C filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 5).
2. Amendment of Appendix C filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Appendix D

Notice of Determination

TO: ☐ Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814
or
☐ County Clerk
County of _____

FROM: (Public Agency) _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

_____
Project Title

_____
State Clearinghouse Number (If submitted to State Clearinghouse)

_____
Contact Person Telephone Number _____

_____
Project Location

_____
Project Description

_____

This is to advise that the _____
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following determinations regarding the above described project:

1. The project ☐ will ☐ will not have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
   The EIR or Negative Declaration and record of project approval may be examined at: _____
3. Mitigation measures ☐ were, ☐ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations ☐ was, ☐ was not, adopted for this project.

Date Received for Filing _____

_____
Signature

_____
Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY

1. New Appendix D filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
3. Amendment filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
5. Amendment of Appendix D filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Appendix E

Notice of Exemption

TO: ☐ Office of Planning and Research FROM:
1400 Tenth Street
Sacramento, California 95814
☐ County Clerk
County of _____

_____
Project Title

_____
Project Location—Specific

_____
Project Location—City Project Location—County

_____
Description of Nature, Purpose, and Beneficiaries of Project

_____
Name of Public Agency Approving Project

_____
Name of Person or Agency Carrying Out Project

_____
Exempt Status: (Check One)
____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

Reasons why project is exempt:

ntact Person Area Code Telephone Extension

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a notice of exemption been filed by the public agency approving the project?

Yes__ No__

Date Received for Filing

Signature

Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

HISTORY

1. New Appendix = filed 3–26–74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6–26–74 (Register 74, No. 26).
3. Amendment filed 1–3–75; designated effective 4–1–75 (Register 75, No. 1).
4. Amendment of Appendix = filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Appendix F

Energy Conservation

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,

(2) decreasing reliance on natural gas and oil, and

(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.

2. Total energy requirements of the project by fuel type and end use.

3. Energy conservation equipment and design features.

4. Initial and life–cycle energy costs or supplies.

5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials maybe discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.

3. The effects of the project on peak and base period demands for electricity and other forms of energy.

4. The degree to which the project complies with existing energy standards.

5. The effects of the project on energy resources.

6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.

3. The potential for reducing peak energy demand.

4. Alternate fuels (particularly renewable ones) or energy systems.

5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short–Term Gains versus Long–Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176. Public Resources Code.

HISTORY

1. New Appendix F filed 12–31–74 as an emergency; designated effective 1–7–75 (Register 75, No. 1).
2. Certificate of Compliance filed 4–29–75 (Register 75, No. 18).
3. Repealer and new Appendix F filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1–1–77.
4. Amendment of Section II filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
5. Change without regulatory effect amending section II.D.2. filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

Appendix G

Environmental Checklist Form

1. Project title: _____

2. Lead agency name and address:

_____

_____

_____

3. Contact person and phone number: _____

4. Project location: _____

5. Project sponsor's name and address:

_____

_____

_____

6. General plan designation: _____ 7. Zoning: _____

8. Description of project: (Describe the whole action involved, including but not limited to later 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:

_____

_____

_____

_____

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

_____

_____

_____

_____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

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

☐ Aesthetics	☐ Agriculture Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology/Soils
☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality	☐ Land Use/Planning
☐ Mineral Resources	☐ Noise	☐ Population/Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Utilities/Service Systems	☐ Mandatory Findings of Significance	

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature _____ Date _____

Printed Name _____ For _____

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project–specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project–specific screening analysis).

2) 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.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross–referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site–specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:
a) the significance criteria or threshold, if any, used to evaluate each question; and
b) the mitigation measure identified, if any, to reduce the impact to less than significance.

SAMPLE QUESTION:
Issues:

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS—Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic 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 which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non–agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non–agricultural use?	☐	☐	☐	☐
III. AIR QUALITY—Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non–attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES—Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐
V. CULTURAL RESOURCES—Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐
VI. GEOLOGY AND SOILS—Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist–Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic–related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on– or off–site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐
d) Be located on expansive soil, as defined in Table 18–1–B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☐	☐
VII. HAZARDS AND HAZARDOUS MATERIALS— Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one–quarter mile of an existing or proposed school?	☐	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☐
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY—Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., 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 granted)?	☐	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on– or off–site?	☐	☐	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on– or off–site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☐	☐
f) Otherwise substantially degrade water quality?	☐	☐	☐	☐
g) Place housing within a 100–year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☐
h) Place within a 100–year flood hazard area structures which would impede or redirect flood flows?	☐	☐	☐	☐
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐
j) Inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☐
IX. LAND USE AND PLANNING—Would the project:				
a) Physically divide an established community?	☐	☐	☐	☐
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES—Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of a locally–important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XI. NOISE—				
Would the project result in:	☐	☐	☐	☐
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☐
XII. POPULATION AND HOUSING—Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or directly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☐
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XIV. RECREATION—				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
XV. TRANSPORTATION/TRAFFIC—Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☐	☐
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☐
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
f) Result in inadequate parking capacity?	☐	☐	☐	☐
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS—				
Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☐
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☐	☐
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☐
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☐
XVII. MANDATORY FINDINGS OF SIGNIFICANCE—				
a) Does the project have the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 21094 and 21151, Public Resources Code; *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988); *Leonoff v. Monterey Board of Supervisors*, 222 Cal.App.3d 1337 (1990).

HISTORY

1. New Appendix G filed 10–8–76; effective thirtieth day thereafter (Register 76, No 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1–1–77.

2. Amendment of subsections (n) and (o) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment of subsections (j) and (v) and new subsections (y) and (z) filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
4. Amendment of first paragraph and subsection (c) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
5. Repealer of former Appendix G and relettering and amendment of former Appendix I to new Appendix G filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
6. Change without regulatory effect amending Appendix G filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

Appendix H

Environmental Information Form

(To be completed by applicant)

Date Filed _____

GENERAL INFORMATION

1. Name and address of developer or project sponsor: _____

2. Address of project: _____

Assessor's Block and Lot Number _____

3. Name, address, and telephone number of person to be contacted concerning this project: _____

4. Indicate number of the permit application for the project to which this form pertains: _____

5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

6. Existing zoning district: _____

7. Proposed use of site (Project for which this form is filed): _____

PROJECT DESCRIPTION

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off–street parking provided.
12. Attach plans.
13. Propose scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

YES NO

___ ___ 21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.
___ ___ 22. Change in scenic views or vistas from existing residential areas or public lands or roads.
___ ___ 23. Change in pattern, scale or character of general area of project.
___ ___ 24. Significant amounts of solid waste or litter.
___ ___ 25. Change in dust, ash, smoke, fumes or odors in vicinity.
___ ___ 26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.
___ ___ 27. Substantial change in existing noise or vibration levels in the vicinity.
___ ___ 28. Site on filled land or on slope of 10 percent or more.
___ ___ 29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.
___ ___ 30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).
___ ___ 31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).
___ ___ 32. Relationship to a larger project or series of projects.

ENVIRONMENTAL SETTING

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.
34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one–family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set–back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date _____ _____

(Signature)

For _____

NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. New Appendix H filed 10–8–76; effective thirtieth day thereafter (Register 76, No. 40). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1–1–77.
2. Amendment filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix I

Notice of Preparation

TO: _____ FROM: _____

(Responsible Agency) (Lead Agency)

_____ _____

(Address) (Address)

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the probable environmental effects are contained in the attached materials. A copy of the Initial Study ☐ is, ☐ is not, attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

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Please send your response to _____ at the address shown above. We will need the name for a contact person in your agency.
Project Title:
Project Applicant, if any:
te_____

Signature _____
Title _____
Telephone _____

Reference: California Administrative Code, Title 14, Sections 15035.7, 15054.3, 15066.

HISTORY

1. Repealer and new Appendix I filed 8–19–94; operative 9–19–94 (Register 94, No. 33). For prior history, see Register 80, No. 19.
2. Relettering of former Appendix I to Appendix G and relettering of former Appendix J to new Appendix I filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix J

Examples of Tiering EIR's

FIRST TIER EIR (15152)	• project encompasses separate but related projects such as general plan, zoning, development • later tiers move from general to specific analysis of projects
Later Project EIR	• later project is consistent with general plan or zoning • initial study must examine significant effects not covered in prior EIR • later EIR must state lead agency is using tiering concept and must comply with section 15152
STAGED EIR (15167)	• one large project will require a number of discretionary approvals from govt. agencies and one of those approvals will occur more than two years before construction commences
Supplement to the Staged EIR	• supplements to the staged EIR are prepared for later government agency approvals on the same overall project if information available at the time of that later approval would permit consideration of additional environmental impacts, mitigation measures or reasonable alternatives
PROGRAM EIR (15168)	• series of actions or activities that can be characterized as one large project and are related either: • geographically • as logical parts of a change of activities • in connection with rules, regulations, plans or other general criteria governing a continuing program • as individual activities carried out under common authority (statutory or regulatory) and having similar environmental effects which can be mitigated in similar ways
Subsequent Project EIR	• only if subsequent activity has effects not examined in the previously certified program EIR will additional environmental documentation be required (if subsequent activity has no new effects, that activity is covered by the program EIR)
MASTER EIR (15175)	• alternative to project, staged, or program EIR • can be used for: – general plan (or gen. plan element, amendment, or update) – redevelopment plan projects (public or private) – project consisting of phases or smaller individual projects – other activities described in 15175 • after five years from initial certification, adopting authority must review the Master EIR and prepare subsequent or supplemental EIR if substantial changes have occurred with resepct to circumstances under which the original Master EIR was adopted • no new EIR is required for subsequent projects within the scope of the Master EIR which cause no additional significant effect
Focused EIR (15177)	• a subsequent, Focused EIR is required only where: – substantial new/additional information shows adverse environmental effects not examined in Master EIR or more significant than described in EIR, or – substantial new/additional information shows mitigation measures previously determined to be infeasible are now feasible and will avoid/reduce the significant effects to a level of insignificance

SPECIAL SITUATIONS/EIRs

Multiple–family residential development/residential and commercial or retail mixed–use development (PRC 21158.5 and Guideline § 15179.5)

- project is multiple–family residential development up to 100 units or is a residential and commercial or retail mixed–use development of not more than 100,000 square feet
- if project complies with procedures in section 21158.5, only a focused EIR need be prepared, notwithstanding the fact that the project wasn't identified in the Master EIR

Redevelopment Project (15180)

- all public and private activities or undertakings in furtherance of a redevelopment plan (public or private) constitute a single project
- the redevelopment plan EIR is treated as a program EIR
- no subsequent EIR is required for individual components of the redevelopment plan unless substantial changes or substantial new information triggers a subsequent EIR or supplement to an EIR pursuant to (sections 15162 or 15163)

Housing/neighborhood commercial facilities (15181)

- a project involving construction of housing or neighborhood commercial facilities in an urbanized area
- a prior EIR for a specific plan, local coastal program, or port master plan may be used as the EIR for such a project (no new EIR need be prepared) provided section 15181 procedures are complied with

Projects Consistent with Community Plan, General Plan, or Zoning (15183)

- a project which is consistent with a community plan adopted as part of a general plan or zoning ordinance or a general plan of a local agency and where there was an EIR certified for the zoning action or master plan
- the EIR for the residential project need only examine certain significant environmental effects, as outlined in section 15183

Regulations on Pollution Control Equipment (PRC section 21159)

- section 21159 requires environmental analysis of reasonably foreseeable methods of compliance at the time of adoption of rule or regulation requiring the installation of pollution control equipment
- an EIR prepared at the time of adoption of the rule or regulation is deemed to satisfy the requirement of section 21159

Installation of Pollution Control Equipment (PRC section 21159.1)

- a focused EIR is permitted where project 1) consists solely of installation of pollution control equipment; 2) is required by rule or regulation adopted by the State Air Resources Board, an air pollution control district or air quality management district, the State Water Resources Control Board, a California regional water quality control board, the Dept. of Toxic Substances Control, or the California Integrated Waste Management Board; and 3) meets the procedural requirements outlined in section 21159.1

History

1. New Appendix J filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Relettering of former Appendix J to Appendix I and new Appendix J filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix K

Criteria for Shortened Clearinghouse Review

Under exceptional circumstances, and when requested in writing by the lead agency, the State Clearinghouse in the Office of Planning and Research (OPR) may shorten the usual review periods for proposed negative declarations, mitigated negative declarations and draft EIRs submitted to the Clearinghouse. A request must be made by the decision–making body of the lead agency, or by a properly authorized representative of the decision–making body.

A shortened review period may be granted when any of the following circumstances exist:

(1) The lead agency is operating under an extension of the one–year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.

(2) The public project applicant is under severe time constraints with regard to obtaining financing or exercising options which cannot be met without shortening the review period.

(3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.

(4) The health and safety of the community would be at risk unless the project is approved expeditiously.

(5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

Shortened review cannot be provided to a draft EIR or proposed negative declaration or mitigated negative declaration which has already begun the usual review process. Prior to requesting shortened review, the lead agency should have already issued a notice of preparation and received comments from applicable State agencies, in the case of an EIR, or consulted with applicable State agencies, in the case of a proposed negative declaration or mitigated negative declaration.

No shortened review period shall be granted unless the lead agency has contacted and obtained prior approval for a shortened review from the applicable state responsible and trustee agencies. No shortened review shall be granted for any project which is of statewide, regional, or areawide significance, as defined in Section 15206 of the guidelines.

History

1. New Appendix K filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Repealer of Appendix K and relettering of former Appendix L to new Appendix K filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Appendix L

Criteria for Shortened Clearinghouse Review

History

1. New Appendix L filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Relettering of former Appendix L to new Appendix K filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Chapter 4. Resources Agency—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the

California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

RESOURCES AGENCY
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

FAIR POLITICAL PRACTICES COMMISSION
1100 K STREET
SACRAMENTO, CALIFORNIA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CALIFORNIA 95814

The Conflict of Interest Code is designated as Chapter 4, Division 6 of Title 14 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Chapter 4. Resources Agency—Conflict of Interest Code

Section
15411. General Provisions
Appendix

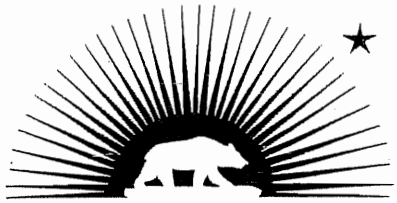
NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300 et seq., Government Code.

HISTORY

1. New Chapter 4 (Sections 15411–15454, not consecutive) filed 2–2–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–7–77 (Register 78, No. 5)
2. Repealer of Chapter 4 (Articles 1–5, Sections 15411–15454, not consecutive) and new Chapter 4 (Section 15411 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment of section and appendix filed 11–21–95; operative 12–21–95. Approved by Fair Political Practices Commission 9–28–95. Submitted to OAL for printing only (Register 95, No. 47).

* * *

Exhibit 9
California State Clearinghouse Handbook



CALIFORNIA

State Clearinghouse Handbook

January 2000

STATE OF CALIFORNIA
GRAY DAVIS, GOVERNOR

Governor's Office of Planning and Research
1400 Tenth Street P.O. Box 3044
Sacramento, CA 95812-3044
State Clearinghouse: 916/445-0613
ATSS 485-0613

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Fax (916) 323-3018

E-mail: state.clearinghouse@opr.ca.gov

http://www.opr.ca.gov/clearinghouse.html

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INTRODUCTION

IN 1973, the State Clearinghouse (SCH) was established to receive and distribute environmental documents prepared pursuant to the California Environmental Quality Act (CEQA) and to coordinate the state-level environmental review process. Located within the Governor's Office of Planning and Research (OPR), the Clearinghouse is the focal point for state agency involvement in the CEQA environmental review process. Operation of the Clearinghouse is governed by the *CEQA Guidelines* (California Code of Regulations, Title 14, Sections 15000-15387), which defines the responsibilities of the Clearinghouse and clarifies its role in the environmental review process. Appendix A describes those projects requiring review through the Clearinghouse.

OPR/SCH also functions as the State Single Point of Contact, under Presidential Executive Order 12372, making it responsible for coordinating state and local review of applications for federal grants or loans under state-selected programs. In this capacity, it is also the function of the Clearinghouse to coordinate state and local review of federal financial assistance applications, federally required state plans, direct federal development activities, and federal environmental documents. The purpose of the process is to afford state and local participation in federal activities occurring within California. The Executive Order does not replace public participation, comment, or review requirements of other federal laws, such as the National Environmental Policy Act (NEPA), but gives the states an additional mechanism to ensure federal agency responsiveness to state and local concerns.

This *State Clearinghouse Handbook* explains the functions of the Clearinghouse under CEQA and Presidential Executive Order 12372.

How the State Clearinghouse Serves Government Agencies and the Public

Coordinating the Distribution and Review of Environmental Documents under CEQA

All draft Environmental Impact Reports (EIRs) and draft Negative Declarations for projects that involve a Responsible or Trustee state agency or are of statewide, regional, or areawide significance must be submitted to SCH. It then distributes these documents to other state agencies and coordinates the transmittal of comments by the Responsible and Trustee agencies to the Lead Agency.

Advice and Assistance to Government Agencies and the Public

The SCH staff provides information and assistance on the environmental review process to state and local government officials and the public. The separate Office of Permit Assistance (OPA), in the Trade and Commerce Agency, is available to organize scoping meetings and help applicants identify potential Lead, Responsible, and Trustee agencies. Contact OPA at (916) 322-4245 for help.

Managing Environmental Information

The SCH maintains a computerized information system of all environmental documents it processes. This valuable information is available for use by other state agencies, local governments, and project applicants.

Where to Find Copies of CEQA and the CEQA Guidelines

The *California Environmental Quality Act* (CEQA) can be found in the California Public Resources Code beginning at Section 21000. It is important to check for changes annually because the Act is subject to amendment.

The *CEQA Guidelines* are found in the California Code of Regulations, Title 14, beginning at Section 15000. The current statute and *Guidelines* (as revised March 29, 1999) are available online at the California Land Use Planning and Information Network (LUPIN) web site (http://ceres.ca.gov/planning/).

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ENVIRONMENTAL DOCUMENT REVIEW PROCESS

Requirements for Submittal of Environmental Documents to SCH

LEAD AGENCIES are required to send environmental documents, including draft Negative Declarations, Notices of Preparation, and Draft Environmental Impact Reports, to the SCH pursuant to *CEQA Guidelines* Sections 15205 and 15206.

a) Draft EIRs and Negative Declarations to be reviewed by state agencies must be submitted to the State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044. For courier or hand delivery, submit to: 1400 Tenth Street, Suite 222, Sacramento, CA 95814.
b) The following environmental documents must be submitted to SCH for review by state agencies:
   1) Draft EIRs and Negative Declarations prepared by a state Lead Agency.
   2) Draft EIRs and Negative Declarations prepared by any public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project.
   3) Draft EIRs and Negative Declarations on projects identified in *CEQA Guidelines* Section 15206 as being of statewide, regional, or areawide significance.
   4) Draft EISs, environmental assessments, and Findings of No Significant Impact (FONSI) prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

The following pages outline the step-by-step environmental document review procedures of SCH.

Negative Declaration Process

This section explains the procedures when a draft Negative Declaration is submitted to SCH for state agency review.

Step 1: Submittal of Negative Declaration to State Clearinghouse

When a Negative Declaration requires state agency review, submit at least ***15 copies*** to the SCH. State review of a Negative Declaration is required when a state agency is the Lead Agency, a Responsible Agency, a Trustee Agency, or otherwise has jurisdiction by law over a project, or when the project has statewide, regional, or areawide impacts as identified in Section 15206 of the *CEQA Guidelines*. As with draft EIRs, submittal of draft Negative Declarations to SCH must be done by the Lead Agency or by a party clearly authorized by the Lead Agency.

The minimum content requirements for a Negative Declaration are:

A. Description and title of the project;
B. Location of the project, preferably shown on a map;
C. Name of the project proponent;
D. A proposed finding that the project will not have a significant effect on the environment;
E. An attached copy of the Initial Study documenting reasons to support the finding; and
F. Mitigation measures, if any, included in the project to avoid potentially significant effects.

Minimum content requirements for a Negative Declaration are discussed in *CEQA Guidelines*, Section 15071.

Although not required by CEQA, SCH requests a completed Notice of Completion (NOC) Form to be submitted with the 15 copies of the draft Negative Declaration. This form facilitates the processing of environmental documents and is circulated to state agencies together with the Negative Declaration. The information from the NOC form is entered into the SCH database.

Step 2: Distribution and Review Period

When a Negative Declaration is received by the SCH for distribution, a staff analyst assigns an SCH number to the project. If the project already has a number from a previous submittal of an environmental document, the Lead Agency should reference the previously assigned SCH number. Next, the document is skimmed to determine its scope and to identify the state agencies that should receive it for review. The SCH will distribute the document to any Responsible or Trustee state agencies, and to any other agencies which may have relevant expertise in the subject or otherwise have a reason to review the document. (Refer to the appendices for a listing of all state agencies and departments to whom environmental documents normally are distributed.)

The SCH staff analyst sets the review dates and attaches a distribution list to the Notice of Completion form. Documents are then mailed or otherwise delivered to the selected agencies for review and comment. An acknowledgement of receipt, containing the assigned review period, will be mailed to the Lead Agency.

The normal review period for Negative Declarations submitted to SCH is 30 calendar days (see *CEQA Guidelines*,

Section 15105). The review period begins when SCH circulates the document, which is usually the same day it is received. Documents received after noon may be distributed the next working day. Specific review dates are calculated by counting as "day 1" the date on which the document is distributed by SCH and concluding on the 30th calendar day thereafter. A shortened review period of not less than 20 days may be granted under special circumstances, as described below. Lead Agencies may request or provide for a longer review period. Such requests or provisions will routinely be honored. The SCH reserves the right to set a review period longer than 30 days. Lead Agencies will be notified of such longer review periods within one working day of document receipt.

Step 3: Review of Negative Declaration

After SCH has distributed a Negative Declaration to state agencies, those agencies assign the document to staff members in either their Sacramento or regional offices for review, analysis and comment. Agency comments are forwarded to SCH prior to the end of the assigned review period.

Occasionally, state agencies may request an extension of a review period. Reasonable requests for extensions will be granted. The SCH will notify the Lead Agency upon approval of an extension.

Step 4: Negative Declaration Comments

At the end of the state review period, all comments from the reviewing state agencies are collected at SCH. A closing letter and a complete package of comments are forwarded to the Lead Agency on the day following the close of the review period.

Step 5: Notice of Determination

Within five working days of approving a project for which a Negative Declaration has been adopted, a local Lead Agency must file a Notice of Determination (NOD) with the county clerk of the county or counties where the project is located. If a project requires discretionary approval from a state agency, the NOD also must be filed with SCH. If the Lead Agency is a state agency, the NOD must be filed with the SCH.

The information required in a Notice of Determination is listed in Section 15075 of the *CEQA Guidelines*. The filing of the NOD begins a 30-calendar-day statute of limitations on court challenges to the project approval under CEQA.

Helpful Hints

- Submit one completed NOC with your Negative Declaration.
- Submit 15 copies of each Negative Declaration. Submit additional copies if you have identified more than 15 state agencies that should receive a copy.
- Include a cover letter if you have special instructions for the SCH staff.
- Assume that the 30-day review period will commence within 24 hours of receipt by SCH.
- Plan ahead if you will need a shortened review period by calling SCH before mailing your document.
- Call SCH in advance if you have any questions regarding these procedures.

State Clearinghouse Negative Declaration Process
STEP-BY-STEP CHECKLIST

		Lead Agency	State Clearinghouse	Reviewing Agency
1	On the basis of the Initial Study, prepare Negative Declaration.	X		
2	Send 15 COPIES of Negative Declaration and one copy of completed NOC form to State Clearinghouse.	X		
3	Assign SCH number and state review period (normally 30 days) and distribute to selected state agencies.		X	
4	Review and comment on Negative Declaration. Send comments to State Clearinghouse within assigned review period.			X
5	Forward comments to Lead agency at end of review period with a closing letter.		X	
6	• Consider comments recieved. • Adopt Negative Declaration. • Make decision on project.	X		
7	File NOD with county clerk. Also file NOD with SCH if project requires discretionary approval from state agency.	X		

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EIR Process

Step1: Notice of Preparation

To assist the EIR scoping process, a Lead Agency must circulate a Notice of Preparation (NOP) to all Responsible and Trustee Agencies advising them of its intention to prepare a Draft EIR (*CEQA Guidelines,* Section 15082).

The 30-calendar-day review period for a NOP begins when an agency receives the notice for review. Lead Agencies are required to send copies of a NOP directly to all Responsible and Trustee Agencies. SCH staff can assist in identifying Responsible and Trustee state agencies and distributing the NOP to them.

When there is a Responsible or Trustee state agency involved in a project, a copy of the NOP also must be sent to SCH. The Lead Agency's distribution list for the NOP should be attached to SCH's copy of the NOP. Filing the NOP and distribution list with SCH helps ensure that no Responsible or Trustee state agencies have been overlooked.

The minimum content requirements for a NOP are:

A. Description of the project;
B. Location of the project, indicated either on an attached map (preferably a topographical map), or by a street address in an urbanized area;
C. Salient environmental issues; and
D. Probable environmental effects of the project.

The SCH also requests that a completed Notice of Completion form be submitted with the NOP, to expedite processing of the NOP and to allow for accurate data entry into the database. This form facilitates processing of all environmental documents through SCH.

The project description provided in the NOP should be complete enough to give reviewers sufficient information to make meaningful comments. Even though a map is not required in all cases, provision of a good site map and vicinity map is strongly encouraged. The mapping should show the site in a context broad enough to indicate the area to be affected by the project, including rivers, airports, schools, railways, and highways. The Initial Study, if one has been done, should be included to show the probable environmental effects of the project.

Step 2: SCH Number and Distribution

When a NOP is submitted to SCH, a number is assigned to the project. The SCH staff analyst will check the Lead Agency's distribution list and may send copies of the NOP to additional state agencies that have relevant expertise in the subject or otherwise have reason to review the project, even though they are not Responsible Agencies. This does not extend the 30-day comment period for Responsible and Trustee Agencies that already received the NOP directly from the Lead Agency.

SCH receipt of the NOP will be acknowledged by letter to the Lead Agency, noting the SCH number that is to be used for all subsequent environmental documents for that project. A state agency distribution list will be sent with the acknowledgement letter noting any agencies to which SCH has forwarded a copy of the NOP.

Step 3: NOP Review Period

Responsible agencies have a maximum of 30 calendar days from receipt of a NOP to comment on a proposed project (Section 15103 of the *CEQA Guidelines).* When a state agency comments on a NOP, a copy of the comment letter must be submitted to SCH.

The SCH does not compile and transmit state agency comment letters on NOPs after the end of the 30-day NOP comment period. Each commenting state agency must send its comment letter directly to the Lead Agency, with a copy to SCH.

Step 4: Submittal of Draft EIR to SCH

When a Draft EIR requires state agency review, at least **15 copies** must be submitted to SCH together with one copy of the NOC form. Lead Agencies are required to submit their Draft EIR and NOC form to SCH when: (a) the Lead Agency is a state agency, (b) the project involves one or more Responsible or Trustee state agencies, or (c) the project has statewide, regional, or areawide significance, as identified in Section 15206 of the *CEQA Guidelines*. Submittal of Draft EIRs to SCH must be done by the Lead Agency or by a party clearly authorized by the Lead Agency.

A Draft EIR may not be circulated for public review before the end of the comment period for the NOP (*CEQA Guidelines*, Section 15082[a]).

Step 5: Draft EIR Review Period

When a Draft EIR is submitted to SCH for distribution, the SCH number assigned to the NOP should be referenced on the NOC and/or EIR title page. If the document has no prior SCH number, the staff analyst will assign one.

The Draft EIR is reviewed briefly by the staff analyst to determine its scope and to identify the state agencies that should review it. Review dates are then assigned, a distribution list is attached to the NOC form, and the documents distributed to selected agencies. Reviewing agencies are selected for their expertise in a particular subject matter or geographical areas, or their responsibility for particular types of projects. The appendices of this *Handbook* contain a listing of all state agencies to whom SCH may send environmental documents for review.

The state review period typically starts on the same date the Draft EIR is submitted to the SCH if (a) the document is received by noon, and (b) the submittal is complete. Documents received in the afternoon typically are distributed by the next working day. The standard review period for a Draft EIR submitted to SCH is 45 calendar days (see *CEQA Guidelines*, Section 15105). Day 1 of the review period is the date the document is distributed by SCH. The review period ends at 5 p.m. on the 45th calendar day thereafter. On the day following the close of the review period (i.e., the 46th day), the SCH will prepare and mail a closing letter to the Lead Agency. Attached to the closing letter will be copies of any comments received from reviewing state agencies.

A shortened review period of not less than 30 days may be requested and subsequently granted under exceptional circumstances, as described below. Lead Agencies may request or provide for a longer review period. Such requests will be routinely honored. The SCH reserves the right to set a state review period of longer than 45 days. The Lead Agency will be notified of such longer review periods within 1 working day of document receipt by the SCH.

Step 6: Review of Draft EIR

When the Draft EIR is received by reviewing state agencies, those agencies assign the document to staff members for review, analysis and comment. Some state agencies refer the document to regional offices; others rely on their Sacramento staff. Agency comments are forwarded to SCH prior to the end of the assigned review period.

State agencies may request an extension of a review period while a document is in review. Reasonable requests for extensions will be granted. The SCH will notify the Lead Agency upon approval of an extension.

See *CEQA Guidelines*, Section 15096(d) for more information on how Responsible and Trustee state agencies are expected to comment.

Step 7: Draft EIR Comments

On the day following the close of the review period, a complete package of comments is forwarded to the Lead Agency by SCH.

Step 8: Final EIR

After receiving all public comments, including those of state agencies, the Lead Agency must prepare written responses and include them in the Final EIR. Refer to the *CEQA Guidelines*, Section 15088 for information on how to respond to comments; Section 15132 provides information on the content requirements for a Final EIR.

The Lead Agency then must certify the Final EIR before approving the project (*CEQA Guidelines*, Section 15090).

Although it is not required that Final EIRs be filed with the SCH, it is recommended that a copy be provided for information purposes.

State Clearinghouse EIR Process
STEP-BY-STEP CHECKLIST

		Lead Agency	State Clearinghouse	Reviewing Agency
1	Send NOP to State Clearinghouse with state agency distribution list, and directly to responsible and trustee state agencies.	X		
2	Assign SCH number, check distribution, send to additional state agencies if necessary.		X	
3	Review NOP and send comments to Lead agency with copy to State Clearinghouse within 30 days of receipt.			X
4	Prepare DEIR and send 15 copies with NOC form to State Clearinghouse.	X		
5	Assign DEIR state review period (normally 45 days) and distribute to selected state agencies.		X	
6	Review and comment on DEIR. Send comments to State Clearinghouse within assigned review period.			X
7	Forward state agency comments to Lead agency with closing letter following end of review period.		X	
8	• Respond to comments received. • Prepare and certify FEIR. • Make decision on project.	X		
9	File NOD with county clerk. Also file NOD with SCH if project requires discretionary approval from a state agency.	X		

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Step 9: Notice of Determination

Within five working days of approving a project for which an EIR was prepared, a local Lead Agency must file a Notice of Determination (NOD) with the county clerk of the county or counties where the project will be located. If the project requires discretionary approval from a state agency, the NOD also must be filed with SCH. State Lead Agencies must file the NOD with the SCH. The NOD must be signed by the proper authority of the Lead Agency and completed in full before SCH will post it.

The information required in a NOD is listed in Section 15094 of the *CEQA Guidelines*. The filing and posting of the NOD begins a 30-day statute of limitations on court challenges to the project approval under CEQA.

Helpful Hints

- Send the NOP to Responsible and Trustee agencies using certified mail or a similar method to ensure documentation of receipt.
- Submit one NOC with your Draft EIR.
- Submit 15 copies of each Draft EIR. Submit additional copies if you have identified more than 15 state agencies that should receive a copy.
- Include a cover letter to SCH if you have special instructions.
- Advise SCH in advance of Draft EIRs that may require special handling or oversized packaging.
- Call SCH in advance if you have any questions regarding these procedures.
- SCH does not retain copies of all environmental documents it receives.

SHORTENED REVIEW PROCESS

UNDER EXCEPTIONAL circumstances, and when requested by the Lead Agency, SCH may shorten the normal review periods for draft Negative Declarations and EIRs. It is strongly advised that the Lead Agency contact SCH prior to submitting a request for shortened review.

Written requests for shortened reviews *must* be submitted to SCH together with the required 15 copies of the draft environmental document. The request letter must explain why the shortened review is needed and identify prior approval from Responsible state agencies. Certain types of projects are *not* eligible for shortened reviews. Refer to the Shortened Review Request Procedures and criteria below (per Section 21091 (e) of the Public Resources Code).

Criteria for Approving Shortened Review

A request for a shortened review period will only be considered prior to the start of the state review period (i.e., SCH will not shorten a review period while the regular review period is running). SCH will consider a request for a shortened review if one or more of the following criteria are met:

1) The Lead Agency is operating under an extension of the one-year period for completion of an EIR and would not otherwise be able to complete the EIR within the extended period.
2) The public project applicant is under severe time constraints with regard to obtaining financing or exercising options which cannot be met without shortening the review period.
3) The document is a supplement to a draft EIR or proposed negative declaration or mitigated negative declaration previously submitted to the State Clearinghouse.
4) The health and safety of the community would be at risk unless the project is approved expeditiously.
5) The document is a revised draft EIR, or proposed negative declaration or mitigated negative declaration, where changes in the document are primarily the result of comments from agencies and the public.

The Lead Agency should provide evidence that there has been prior consultation with Responsible and Trustee state agencies. In the case of a Draft EIR, the Lead Agency should have sent a NOP to the Responsible and Trustee state agencies. For Negative Declarations, the Lead Agency should have previously consulted, formally or informally, with Responsible and Trustee state agencies.

Before submitting a shortened review request, the Lead Agency must have obtained verbal or written approval for a shortened review period from Responsible and Trustee state agencies. The request letter from the Lead Agency must identify which state agencies have been contacted and the agencies' responses to the request.

Shortened Review Request Procedures

1) The request must be made to SCH in writing by the decision-making body of the Lead Agency, or an authorized representative of the Lead Agency (e.g., City Manager or Planning Director), and shall be made on Lead Agency letterhead. When submitted by a representative, a copy of the resolution or ordinance from the decision-making body of the Lead Agency delegating authority should be attached.
2) The request must explain the "exceptional circumstances" (see criteria) for making the request.
3) The request must be accompanied by 15 copies of the environmental document.
4) The request will not be approved if the project has statewide, regional, or areawide significance (see next page).
5) SCH approval of a shortened review period must be granted before issuing the public notice of availability.
6) The public review period must be at least as long as the review period set by SCH.
7) The review period for a Negative Declaration shall not be shorter than 20 days. The Lead Agency must specify the requested length of the shortened review period.
8) The review period for a Draft EIR shall not be shorter than 30 days. The Lead Agency must specify the requested length of the shortened review period.
9) The Lead Agency may use the Shortened Review Application form contained in this *Handbook* (see Form E).

Projects of Statewide, Regional or Areawide Significance

(From *CEQA Guidelines*, Section 15206)

"A project is considered to be of statewide, regional or areawide significance if the project meets any of the following criteria and shall therefore be ineligible for a shortened review period:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a Negative Declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a Negative Declaration was prepared which would be located in the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 67463 of the Government Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant."

GRANTS PROCESS

(Presidential Executive Order 12372)

The Governor's Office of Planning and Research (OPR) is responsible for implementing Presidential Executive Order 12372. The Order requires federal agencies to use state and local processes of intergovernmental coordination for review of federal financial assistance applications, direct development activities, and environmental documents.

Many federal financial assistance applications specifically instruct the applicant to contact the State Single Point of Contact to ensure coordination of state and local review. The State Clearinghouse (SCH), within OPR, fulfills this role.

The *Catalog of Federal Domestic Assistance* (CFDA) contains an appendix entitled **"Programs Requiring Executive Order 12372 Review,"** which lists all the programs requiring review in the State of California. Grant applicants should consult the CFDA to determine whether the program they are applying for is generally subject to intergovernmental review. Applicants also may call SCH or check the SCH web site to make this determination.

Of those programs generally subject to intergovernmental review, only some of them may be subject to review by the State of California. OPR is responsible for selecting the federal programs which must be reviewed by the State. If you are applying for a federal grant or loan that is on the CFDA list and it is one of the programs selected for review by the State of California, you must contact the SCH as follows.

Applicants for federal assistance programs covered under E.O. 12372 must send a copy of the Federal Standard Form 424 to SCH and to their appropriate Areawide Clearinghouse (see page 14). Form 424 is the cover sheet of the grant application and is entitled, "Application for Federal Financial Assistance." *It is not necessary to transmit the entire application package to SCH.*

Form 424 is date stamped upon receipt by SCH, which begins a 30-day review period. If a Notice of Intent to Comment is received from any agency within the first 30 days of the review period, the review period is automatically extended 30 days, allowing a total review period of not more than 60 days. This extension is intended to allow a commenting agency sufficient time to submit comments.

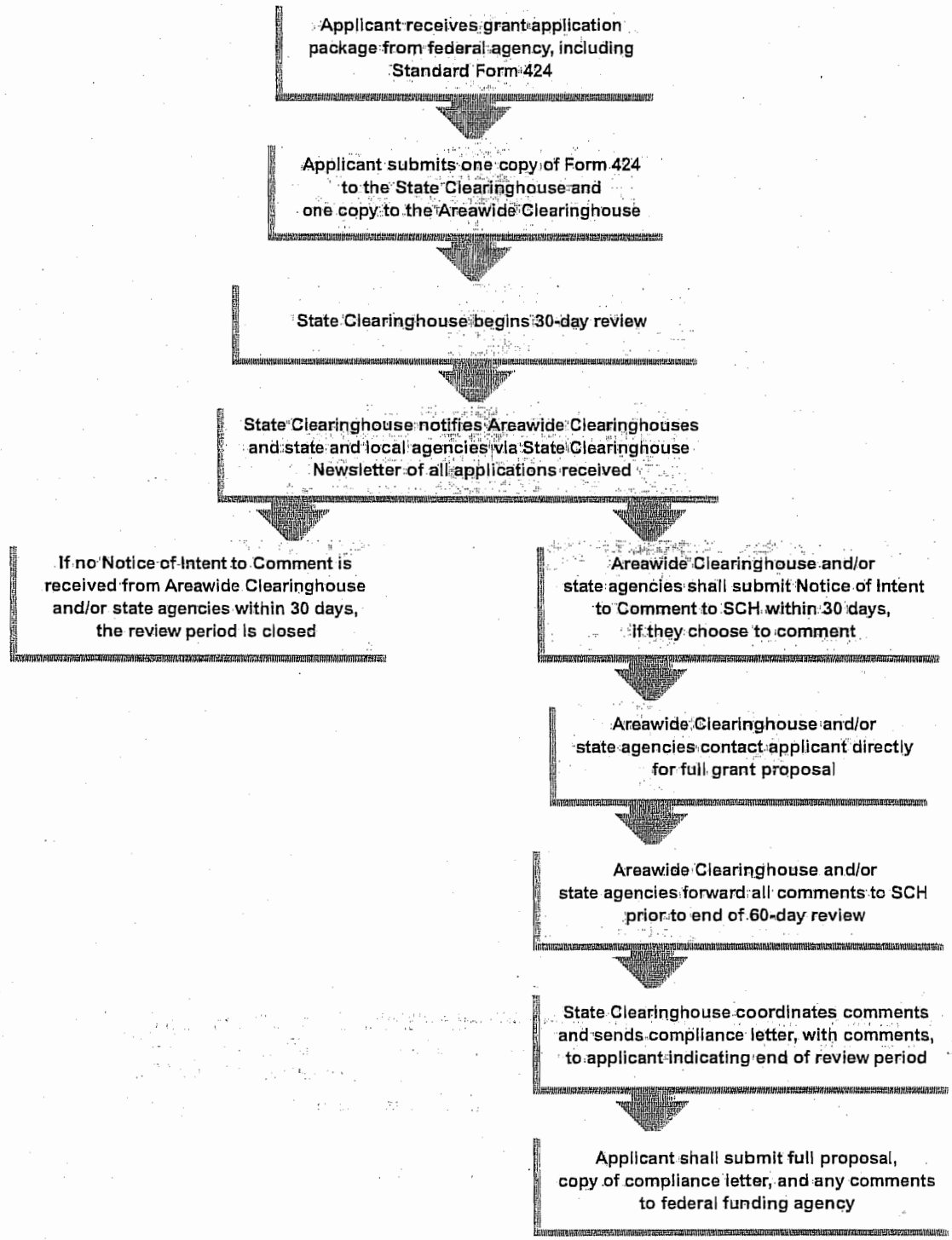
SCH does not assign SCH numbers to grant applications, nor are the grant applications tracked in a database. (The grants database has been discontinued.)

SCH notifies the public of the grant applications by publishing a bi-monthly newsletter, which is distributed to state and local agencies and private individuals, upon request. Copies of all Form 424s received by SCH for the preceding two-week period are included in the *SCH Newsletter*. The *Newsletter* allows agencies and individuals the opportunity to review these applications, and to decide whether they would like to comment on a particular application. Since SCH does not receive a complete copy of the federal assistance proposal, any person wishing to review a proposal must contact the applicant directly for more information.

At the end of the review period, SCH will send a Letter of Compliance to the applicant upon request. This ends SCH involvement in the grant review process.

California State Clearinghouse

Flowchart for Federal Assistance Review



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Areawide Clearinghouses

Association of Bay Area Governments (ABAG)
Street Address: Metro Center, 101 Eighth Street
Oakland, CA 94607
Mailing Address: P.O. Box 2050
Oakland, CA 94604-2050
Phone: 510/464-7900
Region: Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County, Solano County, Sonoma County, and 97 cities

Association of Monterey Bay Area Governments (AMBAG)
Street Address: 445 Reservation Road, Suite G
Marina, CA 93933
Mailing Address: P.O. Box 809
Marina, CA 93933
Phone: 831/883-3750
e-mail: info@ambag.org
website: www.ambag.org
Region: Monterey County, Santa Cruz County, San Benito County and 18 cities

Central Sierra Planning Council and Economic Development District
53 West Bradford Avenue, Suite 200
Sonora, CA 95370
Phone: 209/532-8768
e-mail: cspc@mlode.com
Region: Alpine County, Amador County, Calaveras County, Tuolumne County and 7 cities

Council of Fresno County Governments
2100 Tulare Street, Suite 619
Fresno, CA 93721
Phone: 209/233-4148
website: www.fresnocog.org
Region: Fresno County and 15 cities

Humboldt County Association of Governments (HCAG)
235 4th Street, Suite F
Eureka, CA 95501
Phone: 707/444-8208
Region: Humboldt County and 7 cities

Kern County Council of Governments (Kern COG)
Kress Building, 1401 19th Street, Suite 300
Bakersfield, CA 93301
Phone: 805/861-2191
Region: Kern County and 11 cities

Kings County Association of Governments (KCAG)
Government Center, 1400 West Lacey Blvd., Bldg.#6
Hanford, CA 93230
Phone: 559/582-3211, ext.2670
website: www.co.kings.ca.us/plan/kcag
Region: Kings County and 4 cities

Merced County Association of Governments (MCAG)
369 W. 18th Street
Merced, CA 95340
Phone: 209/723-3153
website: www.mcag.cog.ca.us
Region: Merced County and 6 cities

Sacramento Area Council of Governments (SACOG)
3000 S Street, Suite 300
Sacramento, CA 95816
Phone: 916/457-2264
website: www.sacog.org
Region: Placer County, Sacramento County, Sutter County, Yolo County, Yuba County, El Dorado County and 15 cities

San Diego Association of Governments (SANDAG)
Wells Fargo Plaza
401 B Street, Suite 800
San Diego, CA 92101
Phone: 619/595-5300
website: www.sandag.cog.ca.us
Region: San Diego County and 19 cities

San Joaquin County Council of Governments (SJCCOG)
South Eldorado Street, Suite 400
Stockton, CA 95202
Phone: 209/468-3913
Region: San Joaquin County and 7 cities

Santa Barbara County Association of Governments
222 E. Anapamu Street, Suite 11
Santa Barbara, CA 93101
Phone: 805/568-2546
Region: Santa Barbara County and 7 cities

Sierra Planning Organization and Economic Development District
560 Wall Street, Suite F
Auburn, CA 95603
Phone: 530/823-4703
website: www.sedd.org
Region: El Dorado County (part), Nevada County, Placer County (part), Sierra County and 10 cities

Southern California Association of Governments (SCAG)
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017
Phone: 213/236-1800
website: www.scag.ca.gov
Region: Imperial County, Los Angeles County, Orange County, Riverside County, San Bernardino County, Ventura County and 188 cities

Stanislaus Area Association of Government (SAAG)
1025 15th Street
Modesto, CA 95354
Phone: 209/558-7830
Region: Stanislaus County and 9 cities

Tulare County Association of Governments (TCAG)
961 South Mooney Blvd., Visalia, CA 93277
Phone: 209/733-6291
website: www.tularecog.org
Region: Tulare County and 8 cities

GENERAL ACTIVITIES AND SERVICES

ALTHOUGH coordinating state agency review of environmental documents and grants is the primary function of the State Clearinghouse, the office also has other responsibilities, and provides services that can be useful to those involved in the land use field. These services include posting of certain notices, publication of a bi-monthly newsletter, and providing a computer database search service. These activities are discussed below.

Filing Environmental Notices

As of January 1, 1985, the process for filing environmental notices under CEQA was changed in order to centralize and simplify the process. Notices of Completion, Exemption, and Determination that previously were filed with the Resources Agency are now filed with the Governor's Office of Planning and Research (at SCH).

Notice of Completion

(Public Resources Code, Section 21161)

CEQA requires that a Notice of Completion be filed at SCH by a public agency whenever a Draft EIR is completed. SCH requests that Lead Agencies also submit a NOC for Negative Declarations and NOPs. The Notice of Completion Form contained in the appendices to this *Handbook* satisfies this requirement.

Notice of Availability

(Public Resources Code, Section 21092)

Public notice of the availability of a Draft EIR or a Negative Declaration must be provided by the Lead Agency to enable public agencies and individuals to review and comment on the document.

Minimum Contents of Public Notice of Availability:

1) description of proposed project;
2) location of proposed project;
3) specific period during which comments on proposed project will be accepted;
4) date, time, and place of any public meetings on proposed project;
5) address where copies of Draft EIR or Negative Declaration are available for review; and
6) environmental effects of the project, if any.

The notice must be provided to all organizations and individuals who previously requested notice. At least one of the following notification methods must be used:

1) Publication by the Lead Agency in a newspaper of general circulation in the area affected by the proposed project.
2) Posting of the notice by the Lead Agency on- and off-site in the area where the project is to be located.
3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

A Notice of Availability does not need to be filed with SCH. However, the Lead Agency may submit this notice together with its Draft EIR or Negative Declaration to provide additional information to state agencies.

Notice of Determination

(*CEQA Guidelines*, Sections 15075 and 15094)

A Notice of Determination (NOD) is a document filed by a public agency within 5 days after it approves or determines to carry out a project that is subject to the requirements of CEQA.

Filing the NOD starts a 30-calendar-day statute of limitations on court challenges to the project approval under CEQA. (See Form C for an example of a NOD form.) If a NOD is not filed, the statute of limitations is 180 days.

Filing requirements for state and local agencies differ as follows:

- Local Lead Agency: If a local Lead Agency is acting on the project, it must file the NOD with the county clerk of the county or counties where the project will be located within 5 working days of approving the project. In addition, if the project requires discretionary approval from any state agency, the local Lead Agency also must file a copy of the NOD with SCH.
- State Lead Agency: When a state agency is the Lead Agency, the NOD must be filed with SCH.

Minimum Contents of a Notice of Determination:

For a Negative Declaration:

(*CEQA Guidelines*, Section 15075)

1) identification of the project, including its common name or title, if possible;
2) location of the project;
3) brief description of the project;
4) date the agency approved the project;
5) the determination by the approving agency that the project in its approved form will not have a significant effect on the environment;
6) statement that a Negative Declaration was prepared pursuant to the provisions of CEQA; and

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7) address where a copy of the environmental document and record of project approval can be examined.

For an Environmental Impact Report (EIR):
(*CEQA Guidelines*, Section 15094)
1) identification of the project, including its common name or title, if possible;
2) location of the project;
3) brief description of the project;
4) date the agency approved the project;
5) determination by the approving agency whether the project in its approved form will have a significant effect on the environment;
6) statement that an EIR was prepared pursuant to the provisions of CEQA;
7) whether mitigation measures were made a condition of the approval of the project;
8) whether a statement of overriding considerations was adopted for the project;
9) whether findings were made pursuant to Section 15091 of the *CEQA Guidelines*; and
10) address where a copy of the final EIR and record of project approval may be examined.

Additionally, the notice shall be mailed to any person who has filed a written request for such notice.

Notice of Exemption
(*CEQA Guidelines*, Section 15062):

A Notice of Exemption (NOE) is a brief notice that can (but is not required to) be filed after a public agency has decided to carry out or approve a project it has determined is exempt from CEQA.

If a NOE is filed, it should be filed with the county clerk or SCH after the project has been approved. When a public agency approves an applicant's project, either the agency or the applicant may file a Notice of Exemption.

There are different filing requirements for state agencies, local agencies, and project applicants, as follows:

- *State Lead Agency:* If a state agency, board, or commission determines that a project is not subject to CEQA, it may file a NOE with SCH after the project has been approved.
- *Local Lead Agency:* When a local agency files this notice, it must be filed with the county clerk of the county or counties where the project is to be located.
- *Applicant:* When an applicant files a NOE, the notice must be filed in the same place as if it were filed by the Lead Agency. Additionally, the notice shall be accompanied by a certified document issued by the public Lead Agency stating that the agency has found the project to be exempt.

Additionally, the notice must be mailed to any person who has filed a written request for such notice.

This filing begins a 35-day statute of limitations on legal challenges to the Lead Agency's decision that the project is exempt from CEQA. If a NOE is not filed, a 180-day statute of limitations applies. (See sample NOE form in the appendices to this *Handbook*.)

Minimum Contents of a Notice of Exemption:
1) brief description of the project;
2) a finding that the project is exempt, including a citation that references the *CEQA Guidelines* or statutory section under which it is found to be exempt; and
3) brief statement of reasons to support the finding.

Computer Database

Environmental Documents

Environmental documents submitted to SCH for review are recorded in a computer database that contains records of all documents filed from 1983 to the present. The information in the database is taken directly from the NOC forms provided by the Lead Agency, and includes the following:
A. title of the project;
B. project's SCH number;
C. name and address of the Lead Agency;
D. name and telephone number of a contact person;
E. type of local action, e.g., specific plan, rezone, etc.;
F. location of the project;
G. description of the project;
H. type of document submitted for review;
I. issues discussed in the document;
J. the state agencies reviewing the document; and
K. the state review period.

This database can be a useful source of information for planners, consultants, and project applicants who are preparing new environmental documents. The SCH has search capabilities to find past environmental documents based on any of the variables listed above. The purpose of the database is to streamline the environmental document preparation process by allowing reuse of relevant information from prior documents for similar projects or issues, and for research.

The SCH charges $22.00 per hour for database searches and related printouts, with time billed for each complete quarter-hour (i.e., the charge for a 15-minute search would be $5.50). There is no fee for searches that take less than 15 minutes.

Notices

The SCH also maintains in its computer database a record of all Notices of Exemption and Determination received since

January 1, 1985. When a NOE or NOD is received, all pertinent data from the form is entered into the computer. It is then possible to verify that a notice has been received by searching under the SCH number (if applicable), the Lead Agency name, project title, or project location. This system has made it easier for the Lead and Responsible agencies, attorneys, and interested parties to confirm the date that a notice was filed at SCH. Copies of all NODs and NOEs received by SCH are kept on file for a period of five years. All records older than five years are removed to archives or destroyed.

Grants

Pursuant to Presidential Executive Order 12372, SCH receives certain State-selected federal grant applications for circulation. Prior to 1997, SCH entered the information from the Form 424 into a database. The database can be searched for grant applications received prior to 1997. The information includes the applicant name, the Catalog of Federal Domestic Assistance (CFDA) number, federal program title, the amount of federal money requested, and a contact name and phone number for each application.

Newsletter

The *SCH Newsletter* is published twice per month. It contains general information regarding SCH, a listing of all federal notices received, a brief listing of all environmental documents received (including NOPs, NOCs, NODs, NOEs, Final EIRs, etc.), and a copy of all Form 424s for federal grant applications received during the preceding two weeks. The newsletter is mailed to approximately 140 agencies and individuals, including state and local agencies, all areawide clearinghouses, some city and county planning departments, depository libraries, and other agencies and individuals upon request.

Faxing

With the increased use of and reliance upon facsimile machines, SCH has developed the following policies regarding faxed information.

In all instances, the faxed document should be addressed to the proper staff person and the fax must be followed up with a mailed copy of the document that expressly mentions the date and time that the fax was sent.

State Agency Comments: The faxing of state agency comments on environmental documents is permitted.

Environmental Documents: The SCH will not accept Negative Declarations or Draft EIRs by fax. After pre-arrangement with the appropriate SCH staff analyst, NOPs may be accepted by fax.

Environmental Notices: NODs and NOEs may be accepted by fax. If the Lead Agency follows up with a duplicate mailed copy of the NOD or NOE, the Lead Agency must indicate to SCH that a prior copy was sent by fax. This is necessary to avoid duplication of posting and data entry by SCH staff.

Federal Grant Form 424: Federal Form 424 will be accepted by fax. It is the express responsibility of the grant applicant to ensure Clearinghouse receipt of the fax.

State Clearinghouse Fax Number:
(916) 323-3018

Useful Web Sites

The following web site addresses may prove useful to persons seeking information about how to comply with CEQA and the *CEQA Guidelines*.

http://ceres.ca.gov/ceqa
View and download CEQA, the *CEQA Guidelines* and conduct searches.

http://www.whitehouse.gov/ceq
Select NEPA Net from content bar. View and download NEPA, NEPA Regulations and related guidance.

http://www.opr.ca.gov
View and download information about OPR, including SCH, local planning assistance, and OPR publications.

http://www.opr.ca.gov/clearinghouse.html
View and download information about SCH, including publications, grant process, and the list of CFDA numbers.

http://ceres.ca.gov/planning/sch
View and download the *SCH Handbook*.

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GENERAL CEQA INFORMATION

Agency Definitions

Lead Agency (*CEQA Guidelines* Section 15367) — the public agency that has the principal responsibility for carrying out or approving a project. *Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15051.*

Local Agency (*CEQA Guidelines* Section 15368) — any public agency other than a state agency, board, or commission.

Public Agency (*CEQA Guidelines* Section 15379) — includes any state agency, board, or commission and any local or regional agency, as defined in the *CEQA Guidelines*. It does not include agencies of the federal government.

Responsible Agency (*CEQA Guidelines* Section 15381) — a public agency that proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency that have discretionary approval power over the project.

State Agency (*CEQA Guidelines* Section 15383) — a governmental agency in the executive branch of state government and funded primarily by the State Treasury. Health and Safety Code Section 25199.1 (o) defines a "state agency" as "any agency, board, or commission of state government . . . include[ing] an air pollution control district and an air quality management district."

Trustee Agency (*CEQA Guidelines* Section 15386) — a state agency having jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California. Trustee agencies include:

- California Department of Fish and Game
- State Lands Commission
- State Department of Parks and Recreation
- University of California

Types of Documents

It is the responsibility of the Lead Agency to determine the appropriate type of CEQA document for its project based on interpretation of the CEQA Statutes and *CEQA Guidelines*.

Negative Declaration (*CEQA Guidelines*, Section 15371) — a written statement by the Lead Agency briefly describing the reasons why a proposed project, not exempt from CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.
The contents of the Negative Declaration are described in *CEQA Guidelines*, Section 15071.

Environmental Impact Report (*CEQA Guidelines*, Section 15362) — a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents are also listed under *CEQA Guidelines*, Article 9.

Notice of Preparation (*CEQA Guidelines*, Section 15375) — a brief notice sent by a Lead Agency to notify the Responsible, Trustee, and involved federal agencies that the Lead Agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR.

Project EIR (*CEQA Guidelines*, Section 15161) — The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

Program EIR (*CEQA Guidelines*, Section 15168) — an EIR that may be prepared on a series of actions that can be characterized as one large project and are related either geographically, or are "logical parts in the chain of contemplated actions, or are in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."

Supplement to an EIR (*CEQA Guidelines*, Section 15163) — The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised. A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087. A supplement to an EIR may be circulated by itself without re-circulating the previous draft or final EIR.

Subsequent EIR and Negative Declaration (*CEQA Guidelines*, Section 15162) — Where an EIR or Negative Declaration has been prepared, it is not necessary to prepare an additional EIR or Negative Declaration unless substantial changes occur with respect to the circumstances under which the project is undertaken, and these changes will require important revisions in the previous EIR or Negative Declaration due to the involvement of new significant environmental impacts not covered in a previous document.

Addendum to an EIR or Negative Declaration (*CEQA Guidelines*, Section 15164)—The Lead or Responsible Agency shall prepare an addendum to an EIR or Negative Declaration if only minor technical changes or additions are necessary to make the document adequate, and the changes made by the addendum do not raise important new issues about the significant effects on the environment.

An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted Negative Declaration. The decision-making body shall consider the addendum with the final EIR or Negative Declaration prior to making a decision on the project.

Final EIR (*CEQA Guidelines*, Sections 15132 and 15362) — an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received.

Comments

Authority to Comment (*CEQA Guidelines*, Section 15044) — Any person or entity other than a Responsible Agency may submit comments to a Lead Agency concerning any environmental effects of a project being considered by the Lead Agency.

Response to Notice of Preparation (*CEQA Guidelines*, Section 15082[b] and Section 15103) — Within 30 days after receiving the Notice of Preparation, each Responsible Agency shall provide the Lead Agency with specific detail about the scope and content of the environmental information related to the Responsible Agency's area of statutory responsibility which must be included in the draft EIR.

The response, at a minimum, shall identify the significant environmental issues and reasonable alternatives and mitigation measures that the Responsible Agency will need to have explored in the DEIR. The response shall also identify whether the agency will be a Responsible Agency or Trustee Agency for the project.

If a Responsible Agency fails to reply within 30 days with either a response or a well-justified request for additional time, the Lead Agency may assume that the Responsible Agency has no response to make and ignore a late response.

Responsible Agency Comments on Draft EIRs and Negative Declarations (*CEQA Guidelines*, Section 15096[d]) — A Responsible Agency should review and comment on draft EIRs and Negative Declarations for projects that the Responsible Agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a Negative Declaration, or additional alternatives or mitigation measures the EIR should include. The comments shall be limited to those project activities within the agency's area of expertise or that are required to be carried out or approved by the agency or that will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

Consideration of Comments on a Negative Declaration (*CEQA Guidelines*, Section 15074[b]) — Prior to approving the project, the decision-making body of the Lead Agency shall consider the proposed Negative Declaration together with any comments received during the public review process. They shall approve the project if they find there is no substantial evidence the project will have a significant effect on the environment.

Evaluation of and Response to EIR Comments (*CEQA Guidelines*, Section 15088)—The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The Lead Agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the Lead Agency's position varies from recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and sugges-

tions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the Lead Agency should either revise the text in the body of the EIR, or include marginal notes showing that the information is revised in the response to comments.

Contents of the Final EIR (*CEQA Guidelines*, Section 15132[d]) — The Final EIR shall consist of, among other things, the responses of the Lead Agency to significant environmental points raised in the review and consultation process.

Failure to Comment (*CEQA Guidelines*, Section 15207) — If any public agency or person who is consulted with regard to an EIR or Negative Declaration fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, without a request for a specific extension of time, that such agency or person has no comment to make. Although the Lead Agency need not respond to late comments, it may choose to respond.

Retention and Availability of Comments (*CEQA Guidelines*, Section 15208) — Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments that may be received on a draft EIR or Negative Declaration under preparation shall also be considered and kept on file.

Purposes of Review

As defined in the *CEQA Guidelines*, Section 15200, the purposes of reviewing Environmental Impact Reports (EIRs) and Negative Declarations include:

a) Sharing expertise,
b) Disclosing agency analyses,
c) Checking for accuracy,
d) Detecting omissions,
e) Discovering public concerns, and
f) Soliciting counter proposals.

STATE CLEARINGHOUSE FORMS

THIS SECTION contains the standard forms used by SCH. Although the forms in this section have been carefully developed to transmit the information required under CEQA, the statute does not require agencies to use these particular forms. Agencies are free to devise their own forms. However, agencies choosing to create their own forms must be sure to include all the information required in the *CEQA Guidelines*.

SCH strongly encourages Lead Agencies to use the following forms.

Form A: ***Notice of Completion***

CEQA Guidelines, Section 15085 requires agencies to file a Notice of Completion (NOC) form with OPR as soon as the Draft EIR is complete. If the Draft EIR will be subject to a state review period, SCH requires that the NOC form accompany the submittal of the required 11 copies of the environmental document.

The NOC form should be used as a document transmittal form when submitting ***any type*** of environmental document to SCH. Note the *Document Type* section on the form and check the appropriate box. This form expedites the processing of environmental documents submitted to SCH for review. SCH also requests that this form be used when submitting Negative Declarations and federal environmental documents.

Form B: ***Notice of Preparation***

CEQA Guidelines, Section 15082 discusses the required contents of a Notice of Preparation (NOP).

Form C: ***Notice of Determination***

CEQA Guidelines, Section 15075 outlines the content requirements for filing a Notice of Determination (NOD). The NOD form in this *Handbook* can be used to file with SCH and/or the county clerk.

Form D: ***Notice of Exemption***

CEQA Guidelines, Section 15062 discusses the content requirements for filing a Notice of Exemption (NOE). The NOE form in this *Handbook* can be used to file with SCH and/or the county clerk.

Form E: ***Shortened Review***

Public Resources Code Section 21091 allows for shortened review periods under certain circumstances. A form for requesting shortened review has been provided in this *Handbook* to ensure that the requesting agency provides all the information necessary for SCH to make a determination. For more information on this process, refer to the Shortened Review Process section of this *Handbook*.

Explanation of the Notice of Completion Form

This form is ***required*** to be submitted with 15 copies of every draft Environmental Impact Report and Negative Declaration that is reviewed through the State Clearinghouse (see *CEQA Guidelines* Section 15085[d]). It is used by the Clearinghouse to transmit all environmental documents.

LEAD AGENCY

Project Title: This is the project's common name. It is best to use project specific words in order to facilitate database searches.

Lead Agency: This is the name of the public agency that has legal responsibility for preparation and review of the environmental document.

Contact Person: Name of contact person from the Lead Agency. This should not be the consultant's name.

Phone: Phone number of the contact person at Lead Agency.

Street Address: This is the mailing address for the contact person at the Lead Agency. State comments will be mailed to this address.

City: City of the Lead Agency address. This is not necessarily the city in which the project is located.

Zip: Zip code of the Lead Agency. Please indicate the new nine-digit zip code if applicable.

County: County of the Lead Agency address. This is not necessarily the county in which the project is located.

PROJECT LOCATION

County: County in which the project is located. Most state agencies assign projects for review according to the county of the project. The State Clearinghouse is not always able to determine the location of the project based on the address of the Lead Agency. An example of this problem is Los Angeles Department of Airports projects located at Ontario International Airport.

City/Nearest Community: City or town in which the project is located, or the community nearest the location of the project.

Cross Streets: Indicate the nearest major cross street or streets.

Total Acres: The total area encompassed by the project site gives some indication of the scope of the project and its regional significance.

Assessor's Parcel Number: For locational purposes.

Section, Township, Range and Base: Please indicate base meridian. If you are not able to provide Assessor's Parcel Number, please indicate Section, Township, and Range.

Highways, Airports, Railroads, Schools, and Waterways (including streams or lakes): These identifiers are of consequence to many projects. By restricting the information to those features within a two-mile radius of the project site, unnecessary data collection can be avoided. Please indicate the name(s) of the waterways, airports, railroads, schools, and the route number(s) of the state highways.

DOCUMENT TYPE

This identifies the nature of the environmental document. Mark appropriate blanks with an "X."

Local Action Type

This helps reviewers understand the type of local approvals that will be required for the project and the nature of the project and its environmental documentation. Mark appropriate blanks with "X."

Development Type

This data category helps identify the scope of the project for distribution purposes. Additionally, the information serves to identify projects of a similar character to assist in the reuse of environmental documents. For some of the development types, the form asks for the number of acres, square footage, and number of permanent employees. Fill in the blanks.

PROJECT ISSUES DISCUSSED IN DOCUMENT

These are the topics on which the environmental document focuses attention. These are not necessarily the adverse impacts of the project, but the issues which are discussed in some depth. Check appropriate blanks.

PRESENT LAND USE AND ZONING

This enables the agencies to understand the extent of the changes proposed and again helps to identify projects with similar environmental issues for later reuse of information.

PROJECT DESCRIPTION

This response should provide a thorough description of the proposed project, enabling reviewing agencies to understand the total project concept. The data categories can provide guidance and structure to the explanation given.

REVIEWING AGENCIES CHECKLIST:

The back of the form lists the agencies and departments to whom SCH may distribute a draft document. The Lead Agency can indicate for SCH's information any Responsible, Trustee, or concerned agencies they would like to review the document, or who have previously been involved in the project's review. Any agencies that received the document directly from the Lead Agency also should be marked.

PUBLIC REVIEW PERIOD

This section is to be filled in when the Notice of Completion form is being filed and not being submitted with environmental documents.

CONSULTING FIRM

This information is to be filled in only if applicable.

APPLICANT

This identifies whether the applicant/project proponent is a private developer or the Lead Agency.

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Form A

Notice of Completion & Environmental Document Transmittal

SCH # _____

Mail to: State Clearinghouse, P. O. Box 3044, Sacramento, CA 95812-3044
(916) 445-0613 state.clearinghouse@opr.ca.gov

Project Title: _____

Lead Agency: _____ Contact Person: _____

Street Address: _____ Phone: _____

City: _____ Zip: _____ County: _____

Project Location:

County: _____ City/Nearest Community: _____

Cross Streets: _____ Zip Code: _____ Total Acres: _____

Assessor's Parcel No. _____ Section: _____ Twp. _____ Range: _____ Base: _____

Within 2 Miles: State Hwy #: _____ Waterways: _____

Airports: _____ Railways: _____ Schools: _____

Document Type:

CEQA: ☐ NOP ☐ Supplement/Subsequent EIR (Prior SCH No.)_____ ☐ Early Cons ☐ Other _____ ☐ Neg Dec ☐ Draft EIR

NEPA: ☐ NOI ☐ EA ☐ Draft EIS ☐ FONSI

Other: ☐ Joint Document ☐ Final Document ☐ Other_____

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Rezone ☐ Annexation
☐ General Plan Amendment ☐ Master Plan ☐ Prezone ☐ Redevelopment
☐ General Plan Element ☐ Planned Unit Development ☐ Use Permit ☐ Coastal Permit
☐ Community Plan ☐ Site Plan ☐ Land Division (Subdivision, etc.) ☐ Other_____

Development Type:

☐ Residential: *Units*_____ *Acres*_____
☐ Office: *Sq.ft.*_____ *Acres*_____ *Employees*_____
☐ Commercial: *Sq.ft.*_____ *Acres*_____ *Employees*_____
☐ Industrial: *Sq.ft.*_____ *Acres*_____ *Employees*_____
☐ Educational _____
☐ Recreational _____

☐ Water Facilities: *Type*_____ *MGD*_____
☐ Transportation: *Type*_____
☐ Mining: *Mineral*_____
☐ Power: *Type*_____ *Watts*_____
☐ Waste Treatment: *Type*_____
☐ Hazardous Waste: *Type*_____
☐ Other:_____

Funding (approx.): Federal $_____ State $_____ Total $_____

Project Issues Discussed in Document:

☐ Aesthetic/Visual ☐ Flood Plain/Flooding ☐ Schools/Universities ☐ Water Quality
☐ Agricultural Land ☐ Forest Land/Fire Hazard ☐ Septic Systems ☐ Water Supply/Groundwater
☐ Air Quality ☐ Geologic/Seismic ☐ Sewer Capacity ☐ Wetland/Riparian
☐ Archeological/Historical ☐ Minerals ☐ Soil Erosion/Compaction/Grading ☐ Wildlife
☐ Coastal Zone ☐ Noise ☐ Solid Waste ☐ Growth Inducing
☐ Drainage/Absorption ☐ Population/Housing Balance ☐ Toxic/Hazardous ☐ Land Use
☐ Economic/Jobs ☐ Public Services/Facilities ☐ Traffic/Circulation ☐ Cumulative Effects
☐ Fiscal ☐ Recreation/Parks ☐ Vegetation ☐ Other _____

Present Land Use/Zoning/General Plan Designation:

Project Description:

Revised January 2000

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Reviewing Agencies Checklist

Form A, continued

KEY
S = Document sent by lead agency
X = Document sent by SCH
✓ = Suggested distribution

_____**Resources Agency**
_____Boating & Waterways
_____Coastal Conservancy
_____Colorado River Board
_____Conservation
_____Fish & Game
_____Forestry & Fire Protection
_____Office of Historic Preservation
_____Parks & Recreation
_____Reclamation Board
_____S.F. Bay Conservation & Development Commission
_____Water Resources (DWR)

Business, Transportation & Housing
_____Aeronautics
_____California Highway Patrol
_____CALTRANS District #_____
_____Department of Transportation Planning (headquarters)
_____Housing & Community Development

_____**Food & Agriculture**

Health & Welfare
_____Health Services _____

State & Consumer Services
_____General Services

Environmental Protection Agency
_____Air Resources Board
_____California Waste Management Board
_____SWRCB: Clean Water Grants
_____SWRCB: Delta Unit
_____SWRCB: Water Quality
_____SWRCB: Water Rights
_____Regional WQCB #_____ (_____)

Youth & Adult Corrections
_____Corrections

Independent Commissions & Offices
_____Energy Commission
_____Native American Heritage Commission
_____Public Utilities Commission
_____Santa Monica Mountains Conservancy
_____State Lands Commission
_____Tahoe Regional Planning Agency

_____Other _____

Public Review Period (to be filled in by lead agency)

Starting Date _____ Ending Date _____

Signature _____ Date _____

Lead Agency (Complete if applicable):
Consulting Firm: _____
Address: _____
City/State/Zip: _____
Contact: _____
Phone: (_____) _____

Applicant: _____
Address: _____
City/State/Zip: _____
Phone: (_____) _____

For SCH Use Only:
Date Received at SCH _____
Date Review Starts _____
Date to Agencies _____
Date to SCH _____
Clearance Date _____
Notes:

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Notice of Preparation

Form B

To: _____
(Agency)

_____
(Address)

_____

Subject: **Notice of Preparation of a Draft Environmental Impact Report**

Lead Agency:

Agency Name _____

Street Address _____

City/State/Zip _____

Contact _____

Consulting Firm (If applicable):

Firm Name _____

Street Address _____

City/State/Zip _____

Contact _____

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the potential environmental effects are contained in the attached materials. A copy of the Initial Study is attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but ***not later than 30 days*** after receipt of this notice.

Please send your response to _____ at the address shown above. We will need the name for a contact person in your **agency**.

Project Title: _____

Project Location: _____
City (nearest) County

Project Description: (brief)

Date _____ Signature _____

Title _____

Telephone _____

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375. *As of January 2000*

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Notice of Determination

Form C

To: ☐ Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, CA 95812-3044

☐ County Clerk
County of _____

_____

_____

From: (Public Agency) _____

_____

_____
(Address)

Subject:
Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

_____
Project Title

State Clearinghouse Number (If submitted to Clearinghouse)	Lead Agency Contact Person	Area Code/Telephone/Extension

_____
Project Location (include county)

Project Description:

This is to advise that the _____ has approved the project described above on
☐ Lead Agency ☐ Responsible Agency

_____ and has made the following determinations regarding the project described above:
(Date)

1. The project [☐will ☐will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☐were ☐were not] made a condition of the approval of the project.
4. A statement of Overriding Considerations [☐was ☐was not] adopted for this project.
5. Findings [☐were ☐were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval is available to the General Public at:

_____

Signature (Public Agency)	*Date*	*Title*

Date received for filing at OPR:

As of January 2000

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Notice of Exemption

Form D

To: ☐ Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, CA 95812-3044

☐ County Clerk
County of _____

_____

_____

From: (Public Agency) _____

_____

_____
(Address)

Project Title: _____

Project Location - Specific:

Project Location – City: _____ **Project Location – County:** _____

Description of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: (*check one*)

☐ Ministerial (Sec. 21080(b)(1); 15268);
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
☐ Categorical Exemption. State type and section number: _____
☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency
Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: _____

☐ Signed by Lead Agency
☐ Signed by Applicant

Date received for filing at OPR: _____

As of January 2000

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Shortened Review Request Form

Form E

(To be filled out and signed by the **Lead Agency** and submitted with project documents to SCH)

To: State Clearinghouse
P.O. Box 3044
Sacramento, CA 95812-3044

From: _____
Lead Agency:

_____
Address

_____

Phone #: ( ) _____

SCH # _____ Contact: _____

Project Title: _____

Project Location: _____
City *County*

Explain "exceptional circumstances" (CEQA, Section 15205(d)) for requesting a shortened review:

_____

_____

_____

_____

_____

_____

List responsible and trustee state agencies, as well as any agencies that have commented on the project (*Send advance copies of the document to these agencies*):

_____ _____

_____ _____

_____ _____

As designated representative for the lead agency, I verify, in their behalf, that there is no "statewide, regional, or areawide significance" to this project. (Attach a copy of the resolution or ordinance from the decision-making body of the lead agency which designates the requestor's authority.)

Length of review being requested: _____ days

Today's date: _____

_____ _____

Print Name *Signature*

As of January 2000

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Appendix A

Projects Requiring State Clearinghouse Review

As required by the *CEQA Guidelines*, Sections 15205 and 15206, the following types of environmental documents must be submitted to the State Clearinghouse for state agency review:

1. *Where the lead agency is a state agency (Guidelines* Section 15205*).*

2. *Where there is a responsible or trustee state agency (Guidelines* Section 15205*).*

3. *Where the project has statewide, regional, or areawide significance (Guidelines* Section 15206*).*

With regard to the third criterion, the *CEQA Guidelines* deem the following types of projects as having *statewide, regional, or areawide significance:*

1. A proposed local general plan, element, or amendment for which an EIR was prepared.

2. A proposed residential development of more than 500 dwelling units.

3. A proposed shopping center or business establishment that will employ more than 1,000 persons or encompass more than 500,000 square feet of floor space.

4. A proposed hotel/motel development of more than 500 rooms.

5. A proposed industrial, manufacturing, or processing plant, or industrial park, planned to house more than 1,000 persons and occupy more than 40 acres of land or encompass more than 650,000 square feet of floor area.

6. A project that would result in the cancellation of a Williamson Act Contract for any parcel of 100 or more acres.

7. A project for which an EIR was prepared and which is located in and substantially impacting an area of critical environmental sensitivity. This includes the Lake Tahoe Basin, the California Coastal Zone, the Sacramento-San Joaquin Delta, the Suisun Marsh, any area within 1/4 mile of a wild and scenic river, and the jurisdiction of the San Francisco Bay Conservation and Development Commission.

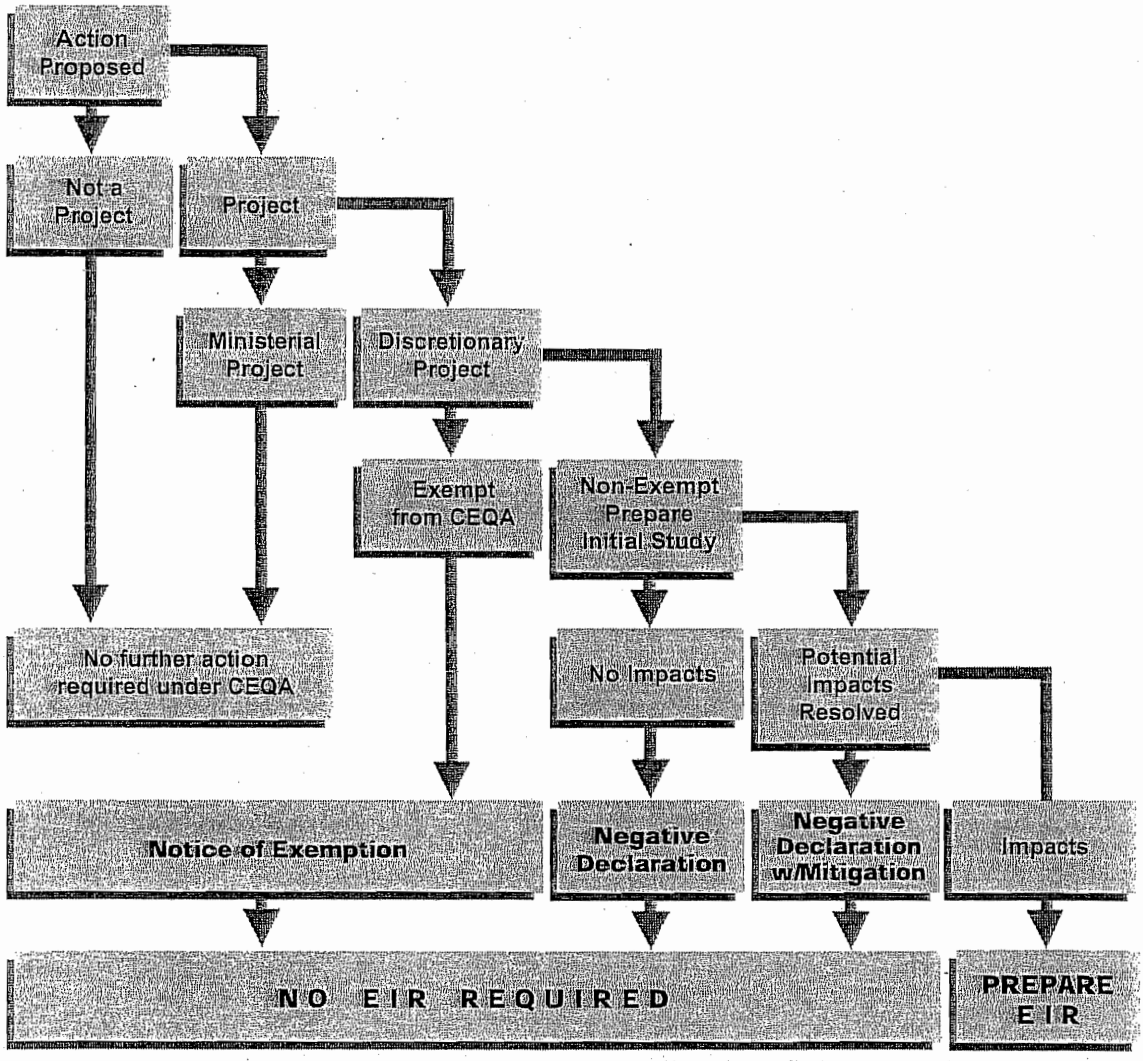
8. A project that would substantially affect sensitive wildlife habitats such as riparian lands, wetlands, bays, estuaries, marshes, and habitats for rare and endangered species.

9. A project that would interfere with the attainment of regional water quality standards as stated in the approved areawide wastewater management plan.

10. A project that would provide housing, jobs, or occupancy for 500 or more people within ten miles of a nuclear power plant.

Appendix B

Lead Agency Decision To Prepare An EIR



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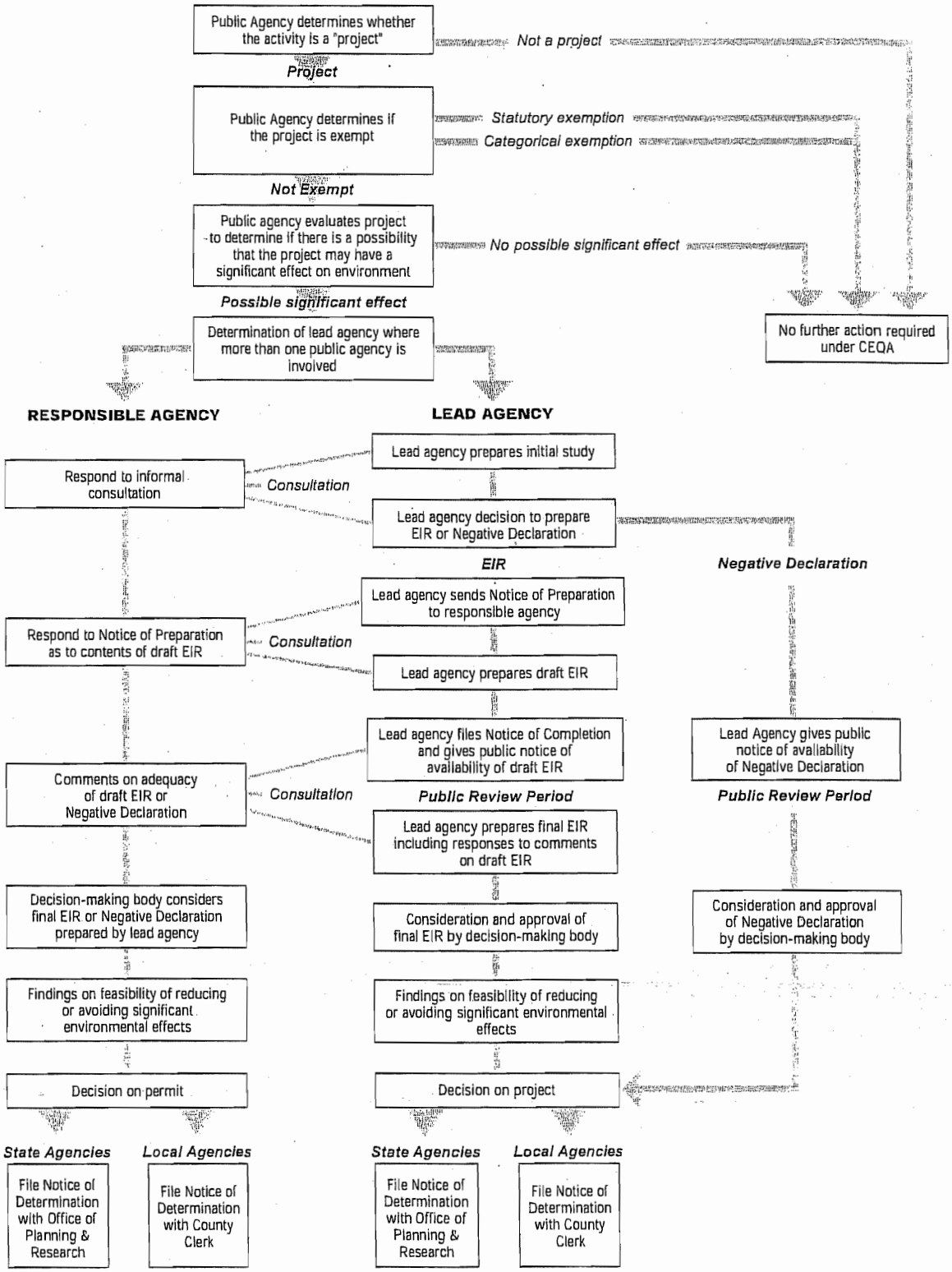
Appendix C

CEQA Process Flowchart



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Appendix D

Time Periods for Review of Environmental Documents

Document or Action	Effect	Time Period	CEQA Statute & Guidelines
Review of application for completeness	Lead agency has 30 days to review an application for completeness. If no determination is made within this period, it will be deemed complete	30 days	15060 15101
Lead Agency acceptance of an application as complete	Begins maximum one-year period to complete environmental review for certain projects	1 year	15060 PRC 21100.2, 21151.5
Initial Study	Provides 30 days to determine whether an EIR or Neg Dec will be required	30 days	15102
Notice of Preparation	Provides 30 days from receipt of NOP for agencies to respond to the lead agency	30 days	15103
Convening of Scope and Content meetings	Requires a meeting requested by an agency or by the applicant to be convened within 30 days of the request	30 days	15104
Public Review	When an environmental document is submitted to the Clearinghouse, the public review period shall be at least as long as the review set by the Clearinghouse	EIR: 30-60 days ND: 20-30 days	15105
Review by State Agencies	Provides standard 45 days for EIRs and standard 30 days for NDs, through State Clearinghouse	EIR: 45 days ND: 30 days	15105
Completion of Negative Declaration	For a private project, the Neg Dec must be adopted within 180 days after the application is complete	180 days	15107 PRC 21100.2, 21151.5
Completion and certification of EIR	For a private project, an EIR must be completed within one year – May be extended once for up to 90 days	1 year	15108
Notice of Determination – filing	Provides that the notice shall be filed within 5 days	5 days	15075 15094
Notice of Determination – challenges	Filing starts a 30-day statute of limitations to court challenges to the approval of the project	30 days	15075 15094 15112
Suspension of time limits	Unreasonable delay of document preparation caused by the applicant allows suspension of time periods in Guidelines, Sections 15107 and 15108	varies	15109
Projects with federal involvement	Time limits may be waived or superseded by federal time requirements		15110

NOTE: *Related time periods for project approval are contained in Chapter 4.5 of the Government Code beginning at Section 65920.*

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Appendix E

Explanation of the State Clearinghouse Number

The State Clearinghouse Number (SCH #) is a ten-digit number which is unique to each project reviewed through the State Clearinghouse. The sequencing of the numbers has evolved through the years. As of January 1, 2000, a new sequencing went into effect. The first four digits indicate the year in which the document was processed by the State Clearinghouse (or *first* processed in the case of projects that circulate through the State Clearinghouse several times). The next two digits indicate the month in which the document was processed. The next digit indicates the geographic location of the project (i.e. "region"). The last three digits indicate the sequence in which the document was processed for that month.

Example: **2000053089** -- *The document having this SCH number was the eighty-ninth document processed in May of 2000 for Region #3.*

2000	05	3	089
YEAR	*MONTH*	*REGION*	*SEQUENCE NUMBER*

The same State Clearinghouse number must be used on all documents relating to a particular project. This enables the Clearinghouse to keep better records of projects and assures that comments and subsequent documents will be correctly filed for future reference.

Please Note: The new sequencing required changing the SCH # from an 8-digit to 10-digit format. Please be advised that all documents received prior to January 1, 2000 will now have a "19" preceding the existing SCH #. We request that you add these two digits to the SCH # of any documents you forward to us that were numbered in the 8-digit format. For example, a project from 1999 would have an SCH # of 1999122001. Additionally, all new environmental documents will be assigned a 10-digit number (i.e. beginning with "2000").

IMPORTANT: Always identify any known SCH number on all communication with the State Clearinghouse. It is especially important to reference the SCH number on environmental documents that have previously been circulated by the Clearinghouse, as the staff can use these numbers for cross-reference.

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Appendix F

Reviewing State Agencies

Address List

RESOURCES AGENCY

Resources Agency
1020 Ninth Street, Third Floor
Sacramento, CA 95814
916/327-1722 Fax 916/327-1648

Dept. of Boating & Waterways
2000 Evergreen Street
Sacramento, CA 95815-3896
916/263-4326 Fax 916/263-0648

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
415/904-5200 Fax 415/904-5400

Dept. of Conservation
801 K Street, MS-24-02
Sacramento, CA 95814
916/445-8733 Fax 916/324-0948

Dept. of Forestry & Fire Protection
1416 Ninth Street, Room 1516-24
Sacramento, CA 95814
916/657-0300 Fax 916/653-8957

Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
916/653-6624 Fax 916/653-9824

Dept. of Parks and Recreation
Resource Management Division
P.O. Box 942896
Sacramento, CA 94296-0001
916/653-6725 Fax 916/657-3355

Reclamation Board
1416 Ninth Street, Room 1601
Sacramento, CA 95814
916/653-5434 Fax 916/653-5805

S.F. Bay Conservation and Development Commission
30 Van Ness Avenue, Room 2011
San Francisco, CA 94102
415/557-3686 Fax 415/557-3767

Department of Water Resources
1020 Ninth Street, Third Floor
Sacramento, CA 95814
916/327-1722 Fax 916/327-1648

Department of Fish and Game
Environmental Services Division
1416 Ninth Street, 13th Floor
Sacramento, CA 95814
916/653-1070 Fax 916/653-2588

Region 1
Department of Fish and Game
601 Locust Street
Redding, CA 96001
530/225-2363 Fax 530/225-2381

Region 2
Department of Fish and Game
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670
916/358-2898 Fax 916/358-2912

Region 3
Department of Fish and Game
P.O. Box 47
Yountville, CA 94599
707/944-5518 Fax 707/944-5563

Region 4
Department of Fish and Game
1234 East Shaw Avenue
Fresno, CA 93710
559/445-6152 Fax 559/445-6607

Region 5
Department of Fish and Game
Habitat Conservation Program
4949 Viewridge Avenue
San Diego, CA 92123
858/467-4234 Fax 858/467-4299

Region 6
Department of Fish and Game
Habitat Conservation Program
330 Golden Shore, Suite 50
Long Beach, CA 90802
562/590-5159 Fax 562/590-5192

Inyo & Mono
Department of Fish and Game
Habitat Conservation Program
407 West Line Street, Room 8
Bishop, CA 93514
760/872-1129 Fax 760/872-1284

HEALTH & WELFARE

Dept. of Health/Drinking Water
601 N. 7th Street, PO Box 942732
Sacramento, CA 94234-7320
916/445-2519 Fax 916/327-6092

INDEPENDENT COMMISSIONS/ AGENCIES

California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814
916/654-5000 Fax 916/654-3882

Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814
916/653-4082 Fax 916/657-5390

Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
415/703-3221 Fax 415/703-1184

State Lands Commission
100 Howe Avenue, Suite 100-S
Sacramento, CA 95825
916/574-1872 Fax 916/574-1885

Colorado River Board
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1035
818/543-4676 Fax 818/543-4685

Tahoe Regional Planning Agency
Environmental Review
P.O. Box 1038
Zephyr Cove, NV 89448
775/588-4547 Fax 775/588-4527

Office of Emergency Services
11030 White Rock Road, Ste.110
Rancho Cordova, CA 95670
916/464-1014 Fax 916/464-1019

Delta Protection Commission
P.O. Box 530
Walnut Grove, CA 95690
916/776-2290 FAX 776-2293

BUSINESS, TRANSPORTATION, AND HOUSING AGENCY

Caltrans, District 1
P.O. Box 3700
Eureka, CA 95502
707/445-6412 Fax 707/441-5883

Caltrans, District 2
P.O. Box 496073
Redding, CA 96049-6073
530/225-3089 Fax 530/225-3271

Caltrans, District 3
P.O. Box 942874 MS-41
Sacramento, CA 94274-0001
916/327-3859 Fax 916/323-7669

Caltrans, District 4
P.O. Box 23660
Oakland, CA 94623-0660
510/286-5572 Fax 510/286-5513

9034

Caltrans, District 5
50 Higuera Street
San Luis Obispo, CA 93401-5415
805/549-3683 Fax 805/549-3077

Caltrans, District 6
P.O. Box 12616
Fresno, CA 93778-2616
559/488-4260 Fax 559/488-4088

Caltrans, District 7
120 South Spring Street, 1-10C
Los Angeles, CA 90012
213/897-4429 Fax 213/897-9210

Caltrans, District 8
464 W. 4th Street, 7th Floor
San Bernardino, CA 92401-1400
909/383-4808 Fax 909/383-5936

Caltrans, District 9
500 South Main Street
Bishop, CA 93514
760/872-0689 Fax 760/872-0678

Caltrans, District 10
P.O. Box 2048
Stockton, CA 95201
209/948-7142 Fax 209/948-7906

Caltrans, District 11
P.O. Box 85406, MS 6-5
2829 Juan Street
San Diego, CA 92186-5406
619/688-3140 Fax 619/688-4299

Caltrans, District 12
3347 Michelson Drive, #100
Irvine, CA 92612-0661
949/724-2239 Fax 949/724-2592

Caltrans – Planning
P.O. Box 942874
Sacramento, CA 94274-0001
916/653-9966 Fax 916/653-0001

Caltrans – Division of Aeronautics
P.O. Box 942874 MS-40
Sacramento, CA 94274-0001
916/654-5314 Fax 916/653-9531

Housing & Community Development
Housing Policy Division
1800 Third Street, Rooom 430
Sacramento, CA 95814
916/323-3176 Fax 916/327-2643

California Highway Patrol
Office of Special Projects
2555 1st Ave.
Sacramento, CA 94298
916/657-7222 Fax 916/452-3151

STATE AND CONSUMER SERVICES

Dept. of General Services
400 R Street, Suite 5100
Sacramento, CA 95814
916/324-0214 Fax 916/445-3556

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Air Resources Board
PO Box 2815
2020 L Street
Sacramento, CA 95814-2815
916/323-8473 Fax 916/445-5023

Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, CA 95826
916/255-4708 Fax 916/255-4216

State Water Resources Control Board
Division of Clean Water Programs
P.O. Box 944212
Sacramento, CA 94244-2120
916/227-4572 Fax 916/227-4349

State Water Resources Control Board
Division of Water Quality
P.O. Box 944213
Sacramento, CA 94244-2130
916/657-0912 Fax 916/657-2388

State Water Resouces Control Board
Division of Water Rights
901 P Street, 3rd Floor
Sacramento, CA 95814
916/657-1377 Fax 916/657-1485

Dept. of Toxic Substances Control
CEQA Tracking Center
400 P Street, Fourth Floor
P.O. Box 806
Sacramento, CA 95812-0806
916/324-3119 Fax 916/324-1788

Regional Water Quality Control Boards:

North Coast Region (1)
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
707/576-2220 Fax 707/523-0135

San Francisco Bay Region (2)
Environmental Document Coordinator
1515 Clay Street, Suite 1400
Oakland, CA 94612
510/622-2300 Fax 510/622-2460

Central Coast Region (3)
81 Higuera Street, Suite 200
San Luis Obispo, CA 93401-5427
805/549-3147 Fax 805/543-0397

Los Angeles Region (4)
320 West 4th Street, Suite 200
Los Angeles, CA 90013
213/576-6600 Fax 213/576-6640

Central Valley Region (5)
3443 Routier Road, Suite A
Sacramento, CA 95827-3003
916/255-3000 Fax 916/255-3015

Fresno Branch Office
3614 East Ashlan Avenue
Fresno, CA 93726
559/445-5116 Fax 559/445-5910

Redding Branch Office
415 Knollcrest Drive
Redding, CA 96002
916/224-4845 Fax 916/224-4857

Lahontan Region (6)
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150
530/542-5400 Fax 530/544-2271

Victorville Branch Office
15428 Civic Drive, Suite 100
Victorville, CA 92392-2359
760/241-6583 Fax 760/241-7308

Colorado River Basin Region (7)
73720 Fred Waring Drive, #100
Palm Desert, CA 92260-2564
760/782-7495 Fax 760/341-6820

Santa Ana Region (8)
3737 Main Street, Suite 500
Riverside, CA 92501-3339
909/782-4130 Fax 909/781-6288

San Diego Region (9)
9771 Clairemont Mesa Blvd., Suite B
San Diego, CA 92124-1324
619/467-2952 Fax 619/571-6972

9035

EXTRA COPY OF TEST CLAIM IN DRAWER BELOW

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 8, 2004

RECEIVED
MAR 11 2004
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of October 8, 2003, the Department of Finance has reviewed the test claim submitted by the Clovis Unified School District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and executive orders cited in the test claim are reimbursable State mandated costs (Claim No. CSM-03-TC-17 "California Environmental Quality Act"). Commencing with Part III on page 185, of the test claim, claimant has identified new duties, which it asserts are reimbursable State mandates.

As a result of our review, we have concluded that this test claim does not constitute a State reimbursable mandate for the following reasons:

1) California Environmental Quality Act (CEQA) requirements are not unique to local government.

In *County of Los Angeles v. State of California*, (1987) 43 Cal.3d 46, the California Supreme Court held that "...The language in Section 6 (of Article XIII B) is far too vague to support an inference that it was intended that, each time the Legislature passes a law of general application, it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs." Therefore, although CEQA may result in additional costs to local entities, those costs are not reimbursable because they are not unique to local government.

The following references show that CEQA is not unique to local government:

Chapter 1514, Statutes of 1984, referenced in the test claim, added section 21001.1 to the Public Resources Code, which reads:

> "The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies."

Section 15002, paragraph (b) of the California Code of Regulations, and cited by the test claim, states:

> "Government Action. CEQA applies to government action. This action may involve: ...
> (3) Private activities which require approval from a governmental agency."

Paragraph (c) then states:

> "Private Action. Private action is not subject to CEQA *unless the action involves governmental participation, financing, or approval.*" (emphasis added)

2) CEQA applies to proposed projects and school facilities construction projects proposed by school districts are discretionary.

Nothing in State law or regulation requires a school district to construct additional school facilities or to acquire any site for the purpose of constructing a school building. Instead, the law provides school districts with flexibility, discretion, and choice over the manner in which districts elect to house their student populations. For example, school districts have the discretion to operate year round multi-track schools or two kindergarten sessions per day, use portable classrooms, or transport students to under-used schools. It is the district's voluntary decision to construct a school facility rather than using an aforementioned alternative that forced the district to carry out the activities required under CEQA.

In *Department of Finance v. Commission On State Mandates* (2003) 30 Cal.4th 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity. Therefore, since the project is at the school district's discretion, the costs of complying with CEQA are not reimbursable.

3) The costs incurred under CEQA are allowable costs for the use of new construction grants provided by the State Allocation Board.

The State Allocation Board provides new construction grants through the State School Facilities Program (SFP) to cover the State's share of all necessary project costs, which would include costs incurred under CEQA. That State's share is typically 50 percent, but may be up to 100 percent if a district receives financial hardship funding. Therefore, any necessary costs of CEQA are, in fact, funded through voluntary participation in the SFP.

4) School districts have the authority to charge development fees to finance construction projects.

Chapter 6 of Part 10.5 of Division 1 of Title 1 of the Education Code authorizes school districts to levy fees against any construction within its district boundaries for the purpose of funding school construction.

Section 17556(d) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In its April 1991 decision in *County of Fresno v. State of California* (1991) 53 Cal.3d, 482, the State Supreme Court held that this code section is facially valid under Section 6 of Article XIII B of the California Constitution. Further, in *Kathleen Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382, the court found that the fee authority can exist even if it is not economically feasible or practical to implement the fee. Therefore, although CEQA may result in additional costs to school districts,

those costs are not reimbursable because the affected districts have the authority to cover those costs through development fees.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 8, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-17

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the various statutes and executive orders sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

MAR - 8 2004

at Sacramento, CA

Walt Schaff

PROOF OF SERVICE

Test Claim Name: California Environmental Quality Act
Test Claim Number: CSM-03-TC-17

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On March 5, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

G-01
California Community Colleges
Attention: Thomas J. Nussbaum
1102 Q Street, Suite 300
Sacramento, CA 95814

A-08
Office of Planning and Research
Attention: Tal Finney
PO Box 3044
Sacramento, CA 95812-3044

C-34
State Architect of California
Attention: Stephan Castellanos
1130 K Street, Suite 101
Sacramento, CA 95814

E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerry Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

B-04
Environmental Protection Agency
Attention: Deborah Barnes
1001 I Street
Sacramento, CA 95812

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Santa Monica Community College District
Attention: Thomas J. Donner
1900 Pico Boulevard
Santa Monica, CA 90405-1628

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Clovis Unified School District
Attention: Bill McGuire
1450 Herndon Avenue
Clovis, CA 93611-0599

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 5, 2004, at Sacramento, California.

Jennifer Nelson

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT C

EITH B. PETERSEN, MPA, JD, President
3252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

March 31, 2004

RECEIVED

APR 02 2004

COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 03-TC-17
Clovis Unified School District
California Environmental Quality Act (CEQA)

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated March 8, 2004[1], to which I now respond on behalf of the test claimant.

A. The Comments of the DOF are Incompetent and Should be Excluded

The test claimant objects to the Opposition and Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

DOF's comments do not comply with this essential requirement. Since the Commission cannot use comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments of the DOF not be included in the Staff's Analysis.

[1] The proof of service attached indicates the document was mailed on March 5, 2004, three days prior.

B. CEQA Requires Additional Duties For School Districts

DOF first argues that CEQA is entirely a law of general application and, therefore, not a reimbursable mandate. Factually, DOF is mistaken.

Subdivision (b) of Education Code Section 17025 provides, in part:

> "...
> (b) ...Notwithstanding any other law, for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the applicant district[2] shall be deemed to be the 'lead agency' with regard to any project funded for that district under this chapter."

Therefore, school districts, when constructing any new school or reconstructing or altering any existing building, is not only required to comply with CEQA, it is also required to fulfill the governmental duties of a lead agency. Other persons and entities are not required to do so. Therefore, as to school districts, CEQA is not entirely a law of general application.

C. Constructing New School Facilities is not Optional

DOF argues that "[N]othing in State law or regulations requires a school district to construct additional school facilities or to acquire any site for the purpose of constructing a school building" and, therefore, complying with the mandates of CEQA are discretionary.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution in 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district." That constitutional command, with the additional proviso that the school maintained by each district be "free" has persisted to the present day. *Butt v. State of California*[3] (1992) 4 Cal.4th 668, 680 Acquiring school sites and constructing school buildings has its root source in the California Constitutional requirement that state and its school districts provide a free public education to every child in the state. As the student population grows, so does the

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[2] Subdivision (a) refers to an "applicant district" as any school district.

[3] Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of Butt v. State of California is attached hereto as Exhibit "A".

need for additional school facilities.

The California Research Bureau has published a study entitled "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds." (Cohen, Joel, February 1999)[4] In the study, the plight of school districts is described therein as follows:

> "As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand." (Cohen, *op.cit.*, at page 1)

This independent study does not say school districts will have the discretion to build new schools, it concludes that districts will be required to build them to meet burgeoning demand.

Even with Proposition 1A money, the report still projected a shortfall of available funds for school construction:

> "The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.... However, while the amount (provided by Proposition 1A) appears to be generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money." (Cohen, *op.cit.*, at page 19)

Proposition 55 appeared on the March 2, 2004 ballot which enacted the Kindergarten-University Public Education Facilities Bond Act of 2004. According to the official ballot information pamphlet[5] prepared by the California Attorney General and published by the

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[4] A true and exact copy of the report as it appears on the current website of the California Research Bureau is attached hereto as Exhibit "B" and is incorporated herein by reference.

[5] A true and exact copy of that portion of the ballot information pamphlet relative to Proposition 55 (excluding partisan arguments and text of proposed law) as it appears on the website of the Secretary of State is attached hereto as Exhibit "C" and is

California Secretary of State, school districts identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. For the DOF to argue that school districts need not acquire new school sites or construct additional school facilities ignores practical reality.

Finally, a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II).*

(1) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of*

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incorporated herein by reference.

Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).[6]

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(3) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion."

(4) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I,* the court explained:

> "If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's

[6] Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

employers faced only with the federal tax. The court replied to this suggestion:

> "However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

> "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

The same can be concluded for the coercive power of the state over local agencies.

(5) The "Kern" Case Did Not Change the Standard

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, ("Kern") the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

> "For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is *necessary* in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

> "In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

The test for determining the existence of a mandate is whether compliance with the test claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582 In light of the finding that there is a need to construct new schools to house nearly 1 million pupils and the need to modernize schools for an additional 1.1 million pupils, it is beyond the realm of practical reason to opportunistically argue that there is no state law or regulation which requires a school district to construct additional school facilities or acquire any site for the purpose of constructing a school building. The California Constitution requires that those pupils be housed and educated.

D. Necessary Costs are not Funded Through the School Facilities Program

DOF next argues that the State Allocation Board provides new construction grants through the School Facilities Program (SFP) to cover the state's share of all necessary project costs; that the state's share is typically 50 percent, but may be up to 100 percent when a district receives hardship funding. DOF then strangely concludes that "[T]herefore, any necessary costs of CEQA are, in fact, funded through voluntary participation in the SFP."

The district's necessary costs of CEQA are not funded out of the remaining 50 percent given to school districts to construct or modernize schools. CEQA is a separate statutory program. In fact, Education Code Section 17025, subdivision (a) provides that the State Allocation Board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans

therefor to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5.

DOF's argument in this regard is bereft of logic or legal foundation.

E. Developer Fees are not Service Charges, Fees or Assessments

DOF cites subdivision (d) of Government Code Section 17556:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:...
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

and argues that the Education Code authorizes school districts to levy fees against any construction within its boundaries for the purpose of funding school construction and, therefore, although CEQA may result in additional costs to school districts, those costs are not reimbursable because the affected districts have the authority to cover those costs through developer fees.

Developer fees are not service charges, fees or assessments to the consumer of public services. Government Code section 17556(d) refers to "service charges, fees or assessments." Education Code section 17620 refers to a "fee, charge, dedication or other requirement." They are not the same.

In addition, Section 17556 presupposes the existence of a mandate which is contrary to DOF's position. Also, subdivision (d) refers to the levy of service charges, fees and assessments against students. The levy of service charges, fees and assessments against students for any aspect of public education would be constitutionally prohibited by Article 9, Section 5, of the California constitution which requires the state to provide free schools.

The California Department of Education has issued Fiscal Management Advisory 97-02[7] which makes it clear that tuition, fees, deposits and other charges may only be

[7] A copy of Fiscal Management Advisory 97-02 and its cover letter dated October 30, 1997 is attached hereto as Exhibit "C" and is incorporated herein by reference.

made when specifically authorized by law. The examples set forth in the advisory clearly demonstrate that the tuition, fees, deposits and other charges referred to in Government Code Section 17556, subdivision (d), clearly do not encompass sources for the construction of school facilities or the costs of complying with CEQA.

Test claimant directs the attention of the Commission to the fact that there is another test claim pending on developer fees. (CSM 02-TC-42) That test claim notes the various restrictions and limitations on the use of developer fees to finance public school construction. For example (and not by way of limitation), Education Code Section 17620(a)(1) limits any fee, charge, dedication, or other requirement to only certain development projects. Likewise, Government Code Section 65995 limits the amount that can be levied (e.g., $1.93 per square foot for residential construction and $0.31 per square foot for commercial or industrial construction). In fact, there is no guaranty that any development projects will be undertaken which may be subject to developer fees.

School districts are limited as to what properties are subject to fees, they are limited as to the amount of the fees they can charge, and they may not charge any fees whatsoever if no development projects are undertaken. In addition, Section 17556(d) requires that the alleged service charges, fees, or assessments were adopted at the same time, or in the same statute, as the test claim legislation.

DOF's reliance on *Kathleen Connell v. The Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382 is misplaced because it is easily distinguishable. In *Connell*, the Department of Health Services amended regulations which increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. Several water districts filed a test claim seeking reimbursement of the additional costs to comply with the regulations. At the time, Water Code section 35470 provided:

> "Any district...may... make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." (Opinion, at page 398)

The court concluded that section 35470 authorized the districts to levy fees sufficient to pay the costs involved in the regulatory amendment because the districts' authority was

unlimited. (Opinion, at page 398)

Developer fees are very limited: some properties are not subject to fees, when available they are limited in amount, and in a district where there is no development, they are not available at all. Here, DOF has presented no facts which show that all school districts in the state have the authority to levy service charges, fees, or assessments "sufficient to pay for" the mandated program or increased level of service.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: California Environmental Quality Act 03-TC-17
CLAIMANT: Clovis Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of March 31, 2004 , addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

☒ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

☐ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

☐ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

☐ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3/31/04 , at San Diego, California.

D. Bramwell

Diane Bramwell

Commission on State Mandates

Original List Date: 10/3/2003
Last Updated:
List Print Date: 10/08/2003
Claim Number: 03-TC-17
Issue: California Environmental Quality Act (CEQA)

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT A

BUTT V. STATE OF CALIFORNIA (1992)

4 Cal. 4th 668; 15 Cal.Rptr. 480; 842 P.2d 1240

[No. S020835. Dec. 31, 1992.]

THOMAS K. BUTT et al., Plaintiffs and Respondents, v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

SUMMARY

Parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. After granting plaintiffs' motion to amend the complaint to include the state Superintendent of Public Instruction and the state Controller as defendants, the trial court granted plaintiffs' motion for a preliminary injunction, ordering the state and the superintendent to ensure that the schools remained open until the end of the school year or to provide the students with a substantially equivalent educational opportunity. The court subsequently issued another order, pursuant to the superintendent's plan, authorizing the Controller to disburse an emergency loan to the district from unspent portions of appropriations for the Greater Avenues for Independence (GAIN) program and another unified school district, and authorizing the superintendent to relieve the present board, and to develop recovery and repayment plans. The state's appeal from the trial court's orders was transferred from the Court of Appeal to the Supreme Court. (Superior Court of Contra Costa County, No. C91-01645, Ellen Sickles James, Judge.)

The Supreme Court reversed the trial court's second order insofar as it approved funding of an emergency loan from appropriations for the GAIN program and the other school district; in all other respects, the court affirmed the orders, and directed the Court of Appeal to remand the matter to the trial court for further proceedings. The court held that the trial court, in deciding the propriety of a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case, since the early closure of the district's schools would have deprived the students of their fundamental right to basic equality in public education, and the state was required to intervene to prevent a deprivation of that right. The court also held that the trial court properly found that denial of the preliminary injunction would have caused students and their parents substantial and irreparable harm greater than that which defendants would suffer if the injunction were granted. The court held that

the trial court acted within its equitable powers in ordering the superintendent to displace the board, operate the district, and impose a plan for the district's permanent financial recovery, but that it was improper for the trial court to order the state to extend the loan by using unspent funds from appropriations for the GAIN program and the other school district, since those funds were not "reasonably available" for that purpose. (Opinion by Baxter, J., with Panelli, Arabian and George, JJ., concurring. Separate concurring and dissenting opinions by Lucas, C. J., Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

(1) **Appellate Review § 119—Dismissal—Grounds—Mootness—Exception for Matters of Public Interest—Issues Concerning Injunction Requiring Emergency State Loan to Fund School District.**—On the state's appeal from a preliminary injunction requiring it to extend an emergency loan to a school district so that it could keep its schools open until the end of the school year despite revenue shortfalls, and to implement a recovery plan for the district, some issues were moot due to the fact that a plan had already been implemented and the state did not seek rescission of the loan. Nevertheless, the Supreme Court had discretion to decide the issues, which included whether the state was responsible to ensure the students' fundamental right to basic educational equality and whether the trial court had authority to order a loan from funds the Legislature had appropriated for other purposes, since those issues involved potentially recurring questions of public importance. As to the appropriations issue, there was a substantial possibility that similar crises would produce similar emergency orders in the future, thus favoring review. Moreover, the state had fully litigated the issue, and any mootness stemmed from the Supreme Court's denial of the state's request for a stay pending appeal.

(2) **Injunctions § 21—Preliminary Injunctions—Appeal—Scope of Review.**—Appellate review of a trial court's decision as to whether to issue a preliminary injunction is limited to whether the decision was an abuse of discretion. In deciding whether to issue a preliminary injunction, the trial court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties resulting from the issuance or nonissuance of the injunction. The trial court's determination must be guided by a "mix" of the two factors, and the greater the

plaintiff's showing on one, the less must be shown on the other to support an injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at a trial on the merits, and the trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. Thus, unless the potential merit of the claim is conceded, the appellate court must address that issue when reviewing an order granting a preliminary injunction.

(3a-3c) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—State's Obligation.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the district from ending the school year six weeks early due to a budget shortfall, the trial court, in granting plaintiffs a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case. Basic equality in public education for all students, regardless of the district in which they reside, is a fundamental right under the California Constitution, and denials of that right are subject to strict scrutiny. The state has the ultimate responsibility for assuring equal operation of the public school system, and is obliged to intervene when a local district's fiscal problems prevent its students from receiving basic educational equality. Moreover, there was no state policy of local autonomy and accountability at the district level that was compelling enough to justify the state's tolerance of the extreme and unprecedented educational deprivation that would have resulted from the early closure of the district's schools.

[See **Cal.Jur.3d,** Schools, §§ 291, 299.]

(4) **Schools § 1—Legislature's Nondelegable Responsibility Over Public School System.**—Public education is an obligation that the state assumed by adoption of the state Constitution. The public school system, although administered through local districts created by the Legislature, is one system applicable to all of the common schools. In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. The Legislature's "plenary" power over public education is subject only to constitutional restrictions. Local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility for public education cannot be delegated to any other entity.

(5) **Constitutional Law § 87.2—Equal Protection—Classification—Judicial Review—Strict Standard of Review for Suspect Classifications or Classifications Touching on Fundamental Interests—Right to Education.**—Under the equal protection clauses of the federal and state Constitutions, heightened judicial scrutiny applies to state-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. Education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(6) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—Preliminary Injunction Against State—Balancing Harm to Parents and Students Against Harm to District.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district to prevent closure of the district's schools six weeks early due to a budget shortfall, the trial court properly found that denial of the parents' motion for a preliminary injunction would have caused district students and their parents substantial and irreparable harm that was greater than that which defendants would suffer if the injunction were granted. Plaintiffs' declarations suggested that the district's inability to complete the school year arose from its ever-worsening fiscal condition and the deterioration of negotiations for emergency aid, and that the teachers' lesson plans did not provide for the contingency of early closure. They also detailed the difficulties of maintaining the educational progress of over 31,000 suddenly displaced students. While plaintiffs may not have demonstrated that "irreparable" harm to students was unavoidable by other means, the trial court's findings both that plaintiffs had a reasonable probability of success on the merits and that they would suffer more harm if an injunction were denied than the state would suffer if it were granted fully justified its decision to grant the preliminary injunction.

(7a, 7b) **Schools § 4—School Districts; Financing; Funds—District in Financial Distress Due to Mismanagement—Trial Court's Equitable Power to Grant Relief—Ordering Superintendent of Public Instruction to Assume Management.**—In an action for injunctive relief by parents against the state, the state Superintendent of Public Instruction, the state Controller, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court did not exceed its powers in issuing an order, based on a plan submitted by the superintendent and the Controller, authorizing the superintendent to

displace the board, operate the district, and impose a plan for the district's permanent financial recovery. Although no statute gave the superintendent such authority, the takeover order was within the trial court's inherent equitable power to enforce the state's constitutional obligations in light of the unique situation. The state was justified in satisfying its duty by extending a loan with conditions to ensure appropriate use of the funds and minimize the risk of default, especially since the district's ability to administer the loan under its existing systems and managers was uniquely suspect.

(8) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Discretionary Acts By Executive or Legislature.**—In general, courts have equitable authority to enforce their constitutional judgments. Principles of comity and separation of powers, however, place significant restraints on the authority of courts to order or ratify acts that are normally committed to the discretion of other branches or officials. In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature. Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy that is adequate to its legitimate task.

(9) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Spending of Legislative Appropriations—Ordering Emergency Loan to School District From Funds Appropriated for Other Educational Purposes.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court improperly ordered the state to extend the district an emergency loan of $19 million out of unspent funds appropriated for the Greater Avenues for Independence (GAIN) program and for an emergency loan to another school district. The appropriations did not make funds "reasonably available" for the purpose of financing the remainder of the district's school term. GAIN's purpose is to provide employment, adult education, and job training to recipients of public aid. The GAIN appropriation was expressly designated for that program alone, and was not intended to fund the needs of non-GAIN students. Similarly, the emergency loan to the other district was specifically appropriated for that district, with conditions addressed to the circumstances of that case. The funding of the remainder of the district's term was clearly

outside the particular purposes for which the appropriations were reserved.

[See 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 112, 115.]

COUNSEL

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Robert J. Bezemek as Amicus Curiae.

OPINION

BAXTER. J.—In late April 1991, after a period of mounting deficits, the Richmond Unified School District (District) announced it lacked funds to complete the final six weeks of its 1990-1991 school term. The District proposed to close its doors on May 1, 1991. The Superior Court of Contra Costa County issued a preliminary injunction directing the State of California (State), its Controller, and its Superintendent of Public Instruction (SPI) to ensure that the District's students would receive a full school term or its equivalent. The court approved the SPI's plan for an emergency State loan, and for appointment by the SPI of an administrator to take temporary charge of the District's operation.

We declined to stay implementation of the plan pending the State's appeal. However, we transferred the appeal here in order to decide an important issue of first impression: Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of "basic" educational equality.

We affirm the trial court's determination that such a duty exists under the California Constitution. Further, the court did not err in concluding, on the basis of the plaintiffs' preliminary showing, that the particular circumstances of this case demanded immediate State intervention. However, the court exceeded its judicial powers by approving the diversion of emergency loan funds from appropriations clearly intended by the Legislature for other purposes.

FACTS AND PROCEDURAL HISTORY[1]

On April 17, 1991, Thomas K. Butt and other named District parents filed a class action for temporary and permanent injunctive relief against the State and the District's board of education (Board).[2] The complaint alleged as follows: The State is responsible for educating all California children, and the Board is the State's agent for carrying out this responsibility in the District. The scheduled final day of the District's 1990-1991 school term was June 14, 1991, but the District had announced that its 44 elementary, secondary, and adult schools would close on May 1, 1991. The resulting loss of six weeks of instruction would cause serious, irreparable harm to the District's 31,500 students and would deny them their "fundamental right to an effective public education" under the California Constitution. Moreover, as an unjustified discrimination against District students compared to those elsewhere in California, the closure would violate equal protection guarantees of the California and United States Constitutions. Therefore, defendants should be enjoined from closing the District's schools before the scheduled end of the scholastic term.

On April 22, 1991, plaintiffs noticed a motion for preliminary injunction. In an attached declaration, Frank R. Calton, a member of the Board, stated

[1]The State, as appellant, has elected to proceed by way of an appendix in lieu of the clerk's transcript, as permitted by rule 5.1 of the California Rules of Court. Some of the documents contained in the appendix, though they include handwritten filing dates, bear no official file stamps and have no proofs of service attached. However, rule 5.1 expressly allows the use of unofficial conformed copies (subd. (c)(1)) and provides that the filing of an appendix "constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the superior court file" (subd. (i)(1)). No party having urged otherwise, we adopt that assumption for purposes of this opinion.

[2]The named plaintiffs sued on behalf of themselves, their children, and other parents and students of the District.

that the District projected a revenue shortfall of $23 million for the 1990-1991 academic year and only had sufficient funds to pay its employees through April 1991. Calton declared the District would have to close at the end of April unless new funds were obtained or employees agreed to work for registered warrants in lieu of paychecks. He indicated that the District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy.

Plaintiffs' motion papers also included declarations by District teachers, academicians in the field of education, and members of the Contra Costa County board of education. These statements detailed the serious disruptive effect the proposed closure would have upon the educational process in the District and upon the quality of education afforded its students.

The motion was heard on April 29, 1991. The Attorney General represented the State in opposition. Counsel for the District represented that the Board's appearance was precluded by an automatic bankruptcy stay. The trial court granted plaintiffs' unopposed motion for amendment of the complaint to include the SPI and the Controller as defendants. Pending applications for intervention and amicus curiae status were not formally granted,[3] but as stipulated by the parties, the court heard argument from the applicants and agreed to consider their briefs.

At the conclusion of the hearing, the trial court ruled orally that under the California Constitution, the State itself is responsible for the "fundamental" educational rights of California students and must remedy a local district's inability to provide its students an education "basically equivalent" to that provided elsewhere in the State. Concluding that the threatened closure would deny the District's students a "constitutionally [equal] education," the court ordered the State and the SPI to act as "they deem appropriate" to ensure that District schools remained open until June 14, 1991, or to provide District students a "substantially equivalent educational opportunity" within the statutory school year ending June 30, 1991.

This oral decision was followed by two written orders filed May 2. One of these, drafted by plaintiffs' counsel, purported to formalize the April 29 ruling. It made findings that closure of District schools by May 1 would cause District students irreparable harm, that the balance of harm favored a preliminary injunction, that education is a "fundamental right" in California,

[3]Applications to appear as amici curiae were submitted by the Richmond Federation of Teachers (RFT) and jointly by the Meiklejohn Civil Liberties Institute, the National Lawyers Guild, and Multi-Cultural Education, Training, and Advocacy, Inc. (collectively Meiklejohn). Complaints in intervention and/or applications for leave to intervene were submitted by the Oakland Unified School District (OUSD), RFT, and United Teachers of Richmond (UTR).

that no "compelling interest" justified denying District students six weeks of instruction available to "every other child in the State," and that plaintiffs' ultimate success on the merits was reasonably probable. The State and its agents again were directed to act "as . . . appropriate" to ensure District students, within the school year ending June 30, 1991, an education "equivalent basically" to that provided elsewhere in California for a full school term. The Controller was added as a State official expressly bound by the court's commands.

On the same day, May 2, the SPI and the Controller submitted their plan for compliance with the preliminary injunction. With counsel for all interested parties present, the court took evidence indicating that uncommitted funds exceeding the estimated $19 million necessary to complete the District's school year were available from existing State appropriations to the Greater Avenues for Independence (GAIN) program and for emergency assistance to the OUSD. Counsel for the OUSD stipulated that his client had "no objection" to use of the $10 million OUSD appropriation for purposes of an emergency loan to the District.

Accordingly, the court executed an order, drafted by counsel for the SPI, approving in principle the submitted plan.[4] The order authorized the Controller to disburse an emergency loan to the District from unspent portions of the GAIN and OUSD appropriations. (See Stats. 1989, ch. 93, § 22.00; Stats. 1989, ch. 1438, § 1 et seq.) Meanwhile, the SPI, by virtue of the State's "ultimate responsibility" for equal education and his own statutory obligation to "superintend the schools of this state" (Ed. Code, § 33112, subd. (a)),[5] would have authority to "relieve the . . . [B]oard of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary" to ensure completion of the school term, the District's financial recovery, and the protection of the loaned funds.[6]

The Attorney General timely noticed appeals from the April 29 and May 2 orders on behalf of the State. Defendants SPI and Controller did not

[4]Though the court's order recites that the SPI and the Controller "presented . . . , after notice to all parties, an agreement" to provide an emergency loan, neither the agreement itself, nor a description of its precise terms, has been made part of the record on appeal.

[5]All further statutory references are to the Education Code unless otherwise indicated.

[6]The preliminary injunction motion was litigated with understandable haste, and evidence of the causes of the District's apparent insolvency was not presented below. On appeal, the SPI invites us to take judicial notice of grand jury findings on this subject which were released after the preliminary injunction was granted. (See The Financial Affairs of the Richmond Unified School District, Rep. of 1990-1991 Contra Costa County Grand Jury (May 29, 1991) [hereafter Report].) Without objection, we may note the Report's contents. (Evid. Code, §§ 452, subds. (c), (d), 455, 459; see *People* v. *Gonzalez* (1990) 51 Cal.3d 1179, 1259, fn. 54 [275 Cal.Rptr. 729, 800 P.2d 1159].) Of course, we cannot accept its findings as evidence or its criticisms of the District and the Board as conclusively founded. We are

appeal. The State immediately requested transfer of the appeal from the Court of Appeal, First Appellate District, to this court (see Cal. Rules of Court, rule 20) and also asked that we stay enforcement of the trial court's orders pending appeal. (1)(See fn. 7.) The SPI and the Controller opposed a stay but supported transfer of the appeal to this court. We granted the transfer request but denied a stay.[7]

DISCUSSION

1. *Standard of review.*

(2) In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party

particularly loath to do so when the District and the Board were disabled below from defending against claims of mismanagement and, except for a special appearance at oral argument, have not participated in the appeal.

Nonetheless, we cannot ignore the grand jury's assessment that despite repeated warnings, an earnest but financially inexperienced Board permitted massive, accelerating deficit spending over a period of several years to expand staff, boost salaries and benefits, and support innovative programs installed by the District's former superintendent. (Report, pp. 3-5.) According to the Report, the resulting deficit for the years 1986-1990 was $29.5 million, with an $18.1 million deficit for 1990 alone. (*Id.*, at p. 4.) In 1990, the District had received a State emergency loan exceeding $9 million, in consequence of which a limited-powers trustee appointed by the SPI was overseeing District financial affairs during the 1990-1991 school term. (*Id.*, at p. 5.)

[7]Our denial of a stay allowed implementation of the plan approved by the trial court, and the District's school year was completed. Though the State vigorously contends the court lacked power to invade the GAIN and OUSD appropriations, it does not demand actual rescission of the court-approved loan. Moreover, we judicially notice without objection that in June 1992, the SPI approved a repayment and recovery plan adopted by the District, restored the Board's powers, and terminated the court-authorized appointment of the State administrator. (See Evid. Code, §§ 452, subds. (c), (h), 455, 459.) Although portions of the appeal may therefore be technically moot, we have discretion to decide the issues presented as potentially recurring questions of public importance. (E.g., *O'Hare* v. *Superior Court* (1987) 43 Cal.3d 86, 91, fn. 1 [233 Cal.Rptr. 332, 729 P.2d 766]; *DiGiorgio Fruit Corp.* v. *Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People* v. *West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 468 [89 Cal.Rptr. 290].)

The Chief Justice objects in particular that we neither must nor should address whether the sources of funding approved by the trial court were proper. However, he fails to indicate why this important and sensitive issue is any more moot, or any less worthy of consideration, than other portions of the trial court's order which have also been irretrievably implemented. Indeed, in these uncertain times, the substantial possibility arises that similar future crises will produce similar emergency orders for immediate diversion of State funds from expedient sources. Hence, contrary to the Chief Justice's suggestion, the issue is one capable of repetition but difficult to review, and this concern favors its prompt consideration under the "public interest" exception to the mootness doctrine. (*DiGiorgio Fruit Corp.*, *supra*, 56 Cal.2d at p. 58.) Moreover, the State has fully litigated the merits of the appropriations issue throughout, and any mootness in this or other aspects of the injunction stems from our denial of the State's request for a stay pending appeal. Under these circumstances, the State should not be penalized on appeal for conceding that State funds already expended by the District cannot practicably be recovered.

will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Common Cause* v. *Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 [261 Cal.Rptr. 574, 777 P.2d 610].) Appellate review is limited to whether the trial court's decision was an abuse of discretion. (*Cohen* v. *Board of Supervisors* (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].)

The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*King* v. *Meese* (1987) 43 Cal.3d 1217, 1227-1228 [240 Cal.Rptr. 829, 743 P.2d 889].) Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause*, *supra*, 49 Cal.3d at p. 442.) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*, at pp. 442-443.) Unless potential merit is conceded, an appellate court must therefore address that issue when reviewing an order granting a preliminary injunction.

Here, the trial court found that plaintiffs' constitutional demand for State intervention had potential merit, and that the balance of interim harm justified the issuance of a preliminary injunction against the State. For the reasons that follow, we conclude that each of these determinations was within the court's discretion.[8]

2. *Merits of plaintiffs' claims.*

(3a) The trial court expressly found "[t]here is a reasonable probability that plaintiffs will succeed on the merits of their case." The court agreed with plaintiffs' claim that the equal protection guaranties of the California Constitution (art. I, § 7, subds. (a), (b); art. IV, § 16, subd. (a)) require State intervention to ensure that fiscal problems do not deprive a local district's

[8]The State insists that under the circumstances of this case, appellate review should not be limited to whether the trial court "abused its discretion" when weighing "interim" harm and "probable" merit. The State stresses that the unstayed injunction, though preliminary in form, was both final and unprecedented in fact. Accordingly, the State suggests, we must decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received.

We disagree. The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. Here, the urgency of the situation forced plaintiffs to produce, and the State to rebut, a hasty tentative showing of constitutional necessity. The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits. Neither the trial court nor this court could undertake a final adjudication of plaintiffs' lawsuit under such circumstances.

students of basic educational equality.[9] The court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on its students' educational rights was serious enough to trigger the State's constitutional duty. The State, supported by amicus curiae Pacific Legal Foundation (Pacific),[10] assails these conclusions on multiple grounds.

At the outset, the State does not claim it lacks any and all constitutional role in local educational affairs. Instead, its reasoning proceeds as follows: The State fulfills its financial responsibility for educational equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base.[11] Unless a district fails to provide the minimum six-month school term set forth in the "free school" clause (Cal. Const., art. IX, § 5),[12] the State has no duty to ensure prudent use of the equalized funds by local administrators. Even if local mismanagement causes one district's services to fall seriously below prevailing statewide standards, the resulting educational inequality is

[9]Article I, section 7, subdivision (a) provides in pertinent part that "[a] person may not be . . . denied equal protection of the laws. . . ." Article I, section 7, subdivision (b) provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . ." Article IV, section 16, subdivision (a) provides that "[a]ll laws of a general nature have uniform operation."

[10]The positions adopted by the various parties and numerous amici curiae in this appeal are diverse. The Attorney General, representing the State as defendant and appellant, opposes all aspects of the trial court orders. Though they were joined as defendants below, the SPI and the Controller, deeming themselves "respondents" on appeal, support plaintiffs' view that the orders were proper in all respects. Amicus curiae Pacific supports the State's position. Amici curiae RFT and UTR approve State financial aid but object to displacement of the local governing board by a State administrator. Amici curiae Frank R. Calton and Howard P. Abelson urge that the Board acted correctly by deciding to close District schools and should not have been displaced. Calton and Abelson also suggest the injunction was improper because the Board had no opportunity to appear and defend against claims of mismanagement. Amici curiae Mario Diaz and Rebecca Hazlewood Bezemek (Diaz and Bezemek) take no position on State financial assistance but argue that the SPI's takeover of District government was improper. Amicus curiae briefs in support of plaintiffs have been filed by the American Civil Liberties Union Foundation, Human Rights Advocates, and Meiklejohn.

[11]The funding scheme for public education is complex, but no party disputes the summary description provided in the State's brief: "The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, [§] 15371, *et seq.*[; Ed.] Code [§] 42238 et seq.) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid. . . ."

[12]Article IX, section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

not grounded in district wealth, nor does it involve a "suspect classification" such as race. Thus, "strict scrutiny" of the disparity is not required, and the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Even if strict scrutiny is appropriate, the local-control policy is "compelling" enough to justify the State's inaction.

Under the unprecedented circumstances of this case, we cannot accept the State's contentions. We set forth our reasons in detail.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution of 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district . . . ." (Cal. Const. of 1849, art. IX, § 3.) That constitutional command, with the additional proviso that the school maintained by each district be "free," has persisted to the present day. (Cal. Const., art. IX, § 5.)

In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6½, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not "conflict with the laws and purposes for which school districts are established" (*id.*, § 14).

(4) Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (*San Francisco Unified School Dist.* v. *Johnson* (1971) 3 Cal.3d 937, 951-952 [92 Cal.Rptr. 309, 479 P.2d 669]; *Piper* v. *Big Pine School Dist.* (1924) 193 Cal. 664, 669 [226 P. 926].) The system of public schools, although administered through local districts created by the Legislature, is "*one* system . . . applicable to all the common schools . . . ." (*Kennedy* v. *Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics in original.) ". . . In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. . . ." (*Jackson* v.

Pasadena City School Dist. (1963) 59 Cal.2d 876, 880 [31 Cal.Rptr. 606, 382 P.2d 878].) "[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision. . . ." (*Kennedy* v. *Miller*, *supra*, 97 Cal. at p. 431; see also *Hall* v. *City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574]; *California Teachers Assn.* v. *Huff* (1992) 5 Cal.App.4th 1513, 1523-1524 [7 Cal.Rptr.2d 699].) The Legislature's "plenary" power over public education is subject only to constitutional restrictions. (*Hall* v. *City of Taft*, *supra*, at pp. 180-181 [302 P.2d 574]; *Tinsley* v. *Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904 [154 Cal.Rptr. 591].) Local districts are the State's agents for local operation of the common school system (*Hall* v. *City of Taft*, *supra*, at p. 181; *San Francisco Unified School Dist.* v. *Johnson*, *supra*, 3 Cal.3d at p. 952; *California Teachers Assn.*, *supra*), and the State's ultimate responsibility for public education cannot be delegated to any other entity (*Hall* v. *City of Taft*, *supra*; *Piper* v. *Big Pine School Dist.*, *supra*, 193 Cal. at p. 669).

(3b) It is true that the Legislature has assigned much of the governance of the public schools to the local districts (e.g., §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed (§§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (E.g., *Johnson* v. *San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698-700 [266 Cal.Rptr. 187] [general theory of respondeat superior does not make State liable for torts of local district or its employees]; *Gonzales* v. *State of California* (1972) 29 Cal.App.3d 585, 590-592 [105 Cal.Rptr. 804] [same]; *First Interstate Bank* v. *State of California* (1987) 197 Cal.App.3d 627, 633-634 [243 Cal.Rptr. 8] [State not vicariously liable for district's breach of contract]; *Board of Education* v. *Calderon* (1973) 35 Cal.App.3d 490, 496 [110 Cal.Rptr. 916] [local district is not the "state" or the "People," so as to be civilly bound in dismissal proceedings by teacher's acquittal of criminal sex offense under principles of res judicata].)

Yet the existence of this local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution. Because access to a public education is a uniquely fundamental personal interest in California, our courts have consistently found that the State charter accords broader rights against State-maintained educational discrimination than does federal law. Despite contrary federal authority, California constitutional principles require State assistance to correct basic "interdistrict" disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.

In *Serrano* v. *Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), this court struck down the existing State

public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. *Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest—education—on the basis of a suspect classification—district wealth—and could not be justified by a compelling state interest under the strict scrutiny test thus applicable. (Pp. 596-619.) As the court concluded, "where fundamental rights *or* suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. [Citation.]" (P. 612, italics added.)

Among other things, *Serrano I* rejected a claim that the wealth-based financing scheme was immune from challenge because the interdistrict revenue disparities it produced were not de jure, but merely de facto. Our opinion detailed the purposeful state legislative action which had produced the geographically based wealth classifications. It also made clear, however, that under California principles developed in cases involving school racial segregation, the absence of purposeful conduct by the State would not prevent a finding that the State system for funding public education had produced unconstitutional results. (*Serrano I*, *supra*, 5 Cal.3d at pp. 603-604, citing *Jackson* v. *Pasadena City School Dist.*, *supra*, 59 Cal.2d 876, 881.)

Serrano I also discussed two groups of federal cases suggesting that place of residence was an impermissible basis for State discrimination in the quality of education. *Serrano I* cited with approval *Hall* v. *St. Helena Parish School Board* (E.D.La. 1961) 197 F.Supp. 649. This federal decision struck down a Louisiana statute permitting local parishes to close their schools rather than integrate them. As *Serrano I* noted, *Hall* v. *St. Helena Parish* found an equal protection violation not only because of the statute's racial consequences, but also " 'because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.' " (*Serrano I*, *supra*, 5 Cal.3d at p. 612, quoting *Hall* v. *St. Helena Parish*, *supra*, 197 F. Supp. at pp. 651, 656.)

Serrano I further noted a "second group of cases, dealing with apportionment [of votes], [in which] the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens. [Citation.] . . . If a voter's address may not determine the weight to which his ballot is entitled,

surely it should not determine the quality of his child's education. [Fn.]" (*Serrano I, supra*, 5 Cal.3d at p. 613.)

Finally, *Serrano I* rejected the State's claim that plaintiffs' wealth-discrimination theory would apply equally, and with disastrous effect, to all public services dependent in part on local property taxes. "[W]e are satisfied," the majority concluded, that whatever the status of other public services, "its uniqueness among public activities clearly demonstrates that *education* must respond to the command of the equal protection clause." (*Serrano I, supra*, 5 Cal.3d at p. 614, italics in original.)

In *San Antonio School District* v. *Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], decided after *Serrano I*, the United States Supreme Court declined to subject Texas's similar local-property-tax based school financing scheme to heightened scrutiny under the Fourteenth Amendment. The *Rodriguez* majority concluded that a school finance scheme dependent on district tax values does not discriminate against the poor as a distinct class; in any event, the majority observed, wealth alone had never been deemed a suspect classification for federal purposes. Moreover, the majority reasoned, education is not a fundamental interest protected by the federal Constitution. Therefore finding the strict scrutiny standard of review inapplicable, the majority upheld Texas's system as rationally related to that state's policy of local control of schools. (411 U.S. at pp. 18-55.)

Nonetheless, in *Serrano* v. *Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (*Serrano II*), this court reaffirmed the reasoning and result of *Serrano I* as required by the separate equal protection guaranties of the California Constitution. (*Serrano II, supra*, 18 Cal.3d at pp. 760-768.) Among other things, *Serrano II* reiterated that for California purposes, education remains a fundamental interest "which [lies] at the core of our free and representative form of government [fn.] . . . ." (*Id.*, at pp. 767-768.)

Hence, *Serrano II* declared, "[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny" to claims of discriminatory educational classifications. (*Serrano II, supra*, at p. 767.) More recent cases confirm that education is a fundamental interest under the California equal protection guaranties (e.g., *Steffes* v. *California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746 [222 Cal.Rptr. 355]) and that the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights (see, e.g., *Hartzell* v. *Connell* (1984) 35 Cal.3d 899, 906-909 [201 Cal.Rptr. 601, 679 P.2d 35] [scope of free school guarantee]).

In *Tinsley* v. *Palo Alto Unified School Dist.*, *supra*, 91 Cal.App.3d 871, parents sought mandate requiring several neighboring San Mateo and Santa Clara County school districts, the State, and certain State school officials, to submit a plan for the redress of interdistrict racial segregation in the affected locality. The petitioners declined to allege any specific acts committed by State or local parties as the cause of the interdistrict imbalance.

The State respondents answered the petition, but the districts successfully demurred, and the petition was dismissed as to them. The Court of Appeal reversed, holding that the California Constitution, unlike its federal counterpart as construed in *Milliken* v. *Bradley* (1974) 418 U.S. 717 [41 L.Ed.2d 1069, 94 S.Ct. 3112], contemplates interdistrict relief to remedy mere de facto racial imbalance which extends across district lines. (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 899-907.) Several aspects of the *Tinsley* decision emphasize the State's ultimate responsibility for maintaining a nondiscriminatory common school system.

At the outset, the districts asserted that an appeal was premature under the "one final judgment" rule, because as mere agencies of the State, which had not demurred, they had no separate legal interests which an appeal from their dismissal could finally resolve. The Court of Appeal observed that if the districts' claim of mere agency was correct, any relief ordered against the State would necessarily affect them, and the judgment dismissing them from the action should therefore be reversed. In any event, the court concluded, the premise of identical interests did not bear scrutiny, because while "[t]he local districts, as agents, may have limited powers in interdistrict affairs, . . . the state . . . has plenary powers in all school district affairs. . . ." (*Tinsley*, *supra*, 91 Cal.App.3d at pp. 880-881.)

Turning to the merits, *Tinsley* dismissed the majority reasoning in *Milliken* insofar as based on the federal rule, long rejected in California (see *Crawford* v. *Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28]; *Jackson* v. *Pasadena City School Dist.*, *supra*, 59 Cal.2d 876), that only de jure racial segregation is a constitutional violation. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 903.) *Tinsley* also distinguished the *Milliken* majority's concern that it "would disrupt and alter" Michigan's entrenched system of local control of schools to impose an interdistrict remedy for Detroit city school segregation without proof that the state or affected suburban districts had engaged in intentional segregative conduct. The *Tinsley* court noted, among other things, that in California, the State shares responsibility with "the local entities it has created" to provide "equal educational opportunity

to the youth of the state" and "has a duty to intervene to prevent unconstitutional discrimination" in its schools. (*Id.*, at pp. 903-904.)[13]

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

The State claims it need only ensure the six-month minimum term guaranteed by the free school clause (Cal. Const., art. IX, § 5). This contention, however, misconstrues the basis of the trial court's decision. Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.

The State argues that even if the District's fiscal problems threatened its students' basic educational equality, any State duty to redress the discrimination must be judged under the most lenient standard of equal protection review. The State reasons as follows: Plaintiffs do not claim discrimination on the suspect basis of race. Nor is wealth-based discrimination at issue; as all parties concede, the District received the full benefit of the equalized funding system mandated by our *Serrano* decisions. At most, plaintiffs assert that a misuse of equalized funds by the District's officials caused a geographical disparity in service. Because residence and geography are not suspect classifications, the State's failure to prevent educational discrimination on those grounds is not subject to strict scrutiny. Rather, State inaction must be accepted as rationally related to the legitimate State policy of local control of schools.

(5) However, both federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever the

[13]In November 1979, the voters adopted a Senate amendment to the California Constitution's equal protection clause, article I, section 7, subdivision (a). The amendment declares that nothing in the California Constitution imposes upon the State, or any local district or official, any obligations beyond those imposed by the Fourteenth Amendment of the United States Constitution "with respect to the use of pupil school assignment or pupil transportation." The amendment further forbids California courts from imposing any school-assignment or pupil-transportation obligation except when a violation of the Fourteenth Amendment has occurred, and unless a federal court could impose such a remedy for the violation. Whatever effect this amendment may have on *Tinsley*'s result, it does not affect consistent interpretations of the California equal protection guaranty where, as here, assignment or transportation of students is not at issue.

disfavored class is suspect *or* the disparate treatment has a real and appreciable impact on a fundamental right or interest. (*Plyler* v. *Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 102 S.Ct. 2382]; *Shapiro* v. *Thompson* (1969) 394 U.S. 618, 634 [22 L.Ed.2d 600, 614-615, 89 S.Ct. 1322]; *Darces* v. *Woods* (1984) 35 Cal.3d 871, 885, 888 [201 Cal.Rptr. 807, 679 P.2d 458]; *Fair Political Practices Com.* v. *Superior Court* (1979) 25 Cal.3d 33, 47 [157 Cal.Rptr. 855, 599 P.2d 46]; *Serrano II*, *supra*, 18 Cal.3d 728, 761, 767-768; *Weber* v. *City Council* (1973) 9 Cal.3d 950, 959 [109 Cal.Rptr. 553, 513 P.2d 601]; *Serrano I*, *supra*, 5 Cal.3d 584, 597; *Westbrook* v. *Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].) As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(3c) The State suggests there was no showing that the impact of the threatened closure on District students' fundamental right to basic educational equality was real and appreciable. Of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization (see discussion, *post*), the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . ." (*Hendrick Hudson Dist. Bd. of Ed.* v. *Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service.

Accordingly, the California Constitution does not guarantee uniformity of term length for its own sake. While the current statutory system for allocating State educational funds strongly encourages a term of at least 175 days (see fn. 14, *post*, at p. 687), that system is not constitutionally based and is subject to change. In an uncertain future, local districts, faced with mounting fiscal pressures, may be forced to seek creative ways to gain maximum educational benefit from limited resources. In such circumstances, a planned reduction of overall term length might be compensated by other means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer programs, and the like. An individual district's efforts in this regard are entitled to considerable deference.

Even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality

of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs.

Here, however, plaintiffs' preliminary showing suggested that closure of the District's schools on May 1, 1991, would cause an extreme and unprecedented disparity in educational service and progress. District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California.[14] The record indicates that the decision to close early was a desperate, unplanned response to the District's impending insolvency and the impasse in negotiations for further emergency State aid.[15] Several District teachers declared that they were operating on standard-term lesson schedules made at the beginning of the school year. These declarants outlined in detail how the proposed early closure would prevent them from completing instruction and grading essential for academic promotion, high school graduation, and college entrance.[16] Faced with evidence of such extensive educational disruption, the trial court did not abuse its discretion

[14]The trial court record contains no evidence of the prevailing term length in California, but the parties assumed below that a minimum term of 175 days prevails, and no dispute has arisen on the issue here. The statutes provide that an established local district may not receive any part of its annual apportionment from the State School Fund if it failed to remain in session at least 175 days during the most recent fiscal year, unless specified circumstances excusing the failure are established to the satisfaction of the SPI. (§§ 41420, subd. (a), 41422.) In an appendix to his brief, the SPI provides copies of local district certifications, submitted to the SPI as a condition of funding under section 41420, which indicate that virtually every established school district in California operated for at least 175 days during the 1990-1991 school year. The SPI asks us to take judicial notice of this information. Having received no objection, we do so. (Evid. Code, §§ 452, subds. (c), (h), 455, 459.)

[15]The declaration of Board member Calton, dated April 12, 1991, detailed the District's growing financial woes and stated the following: ". . . The District has only enough money to pay its employees through April 1991 [even under the most favorable accounting assumptions]. . . . Unless (a) additional funds are received, or (b) employees are willing to work for registered warrants, not redeemable checks, the District will have no alternative but to close all of its public schools at the end of April 1991. [¶] . . . The District has applied to the State of California for a loan, but that request has not been approved. It is my understanding that [collective bargaining concessions demanded by the State] have not been made, although negotiations are continuing. The District has retained bankruptcy counsel, . . . and is preparing to file for bankruptcy prior to April 30, 1991, if necessary."

[16]For example, John Enos, a high school government/economics teacher, stated that early termination of his required senior government class would eliminate intended lessons covering the State's executive and judicial branches, and county and local government. Geoffrey Cantrell, a high school mathematics teacher, stated that if the District closed early, Algebra I students would miss essential instruction in quadratic equations; Algebra II students would miss essential instruction in trigonometry; and geometry students would miss lessons in coordinate systems, logical proof, and trigonometric ratios. Craig Brammer, another high school mathematics teacher who also teaches a preparatory course for the Scholastic Aptitude Test (SAT), opined that loss of six weeks' instruction would severely impair his students' chances on the mathematics portion of the SAT. Betty Jean Crenshaw, a teacher of first-year languages, declared that early closure would prevent students from learning vocabulary and

by concluding that the proposed closure would have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.

The State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions. Once revenues are fairly apportioned at the beginning of each school year, the State insists, it cannot be constitutionally liable for how local officials manage the funds.

Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument. On the contrary, the cases suggest that the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State "has a duty to intervene to prevent unconstitutional discrimination" at the local level. (*Tinsley*, *supra*, 91 Cal.App.3d at p. 904.)

The State's most vigorous contention is that its nonintervention should have been upheld even under the strict scrutiny standard of equal protection analysis. Allowing the District's students to absorb the consequences of District mismanagement, the State urges, was necessary to preserve the State's compelling educational policy of local autonomy and accountability. However, the State fails to demonstrate a policy of local control so compelling as to justify State tolerance of the extreme local educational deprivation at issue here.

In the first place, the local-district system of school administration, though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice. (See Cal. Const., art. IX, §§ 6½, 14.) The Constitution has always vested "plenary" power over education not in the districts, but in the State, through its Legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure. (See *Tinsley*, *supra*, 91 Cal.App.3d at p. 904.) The legislative decision

grammar necessary for advancement to second-year courses. Amy Shinsako, a first grade teacher, stated that early closure would prevent instruction in phonics, reading comprehension, creative writing, handwriting skills, two-digit addition and subtraction, and addition with three addends, all necessary for advancement to the second grade. Several declarants noted that failure to complete the term would prevent the scheduling of final examinations and other term-end projects crucial to the assignment of final grades. Other declarants detailed the difficulties District students would face if forced to transfer to other districts to complete the year's studies. They also noted that unless graduating seniors completed required courses and received final grades, the District might not be able to award high school diplomas, any diplomas awarded would be "stigmatized," and the ability of departing seniors to qualify for college admission might be seriously compromised.

to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Moreover, though the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1), the degree of supervision voluntarily retained by the State over the common school system is high indeed. The volume and scope of State regulation indicate the pervasive role the State itself has chosen to assume in order to ensure a fair, high quality public education for all California students.

School finance aside, the statutes address at length such matters as county and district organization, elections, and governance (§§ 4000-5450, 35000-35780); educational programs, instructional materials, and proficiency testing (§§ 51000-62008); sex discrimination and affirmative action (§§ 40-41, 200-263, 44100-44105); admission standards (§§ 48000-48053); compulsory attendance (§§ 48200-48416); school facilities (§§ 39000-40048); rights and responsibilities of students and parents (§§ 48900-49079); holidays (§§ 37220-37223); school health, safety, and nutrition (§§ 32000-32254, 49300-49570); teacher credentialing and certification (§§ 44200-44481); rights and duties of public school employees (§§ 44000-44104, 44800-45460; see also Gov. Code §§ 3540-3549.3 [organizational and bargaining rights]); and the pension system for public school teachers (§§ 22000-24924). The statutory scheme has spawned further voluminous regulations administered by the State's Department of Education and the SPI. (Cal. Code Regs., tit. 5, §§ 1-23005.) This long-established level of State involvement in the public education system undermines any claim that local control is a paramount and compelling State policy for all purposes.

Nor is there any indication that the State has had a compelling policy of absolute budgetary freedom and responsibility for local districts. On the contrary, during the years in which the District's deficit developed, districts were required to adopt budgets meeting State standards, and to submit them for oversight and approval by county and State authorities. (§§ 33127, former §§ 42120-42129.) Failure to adopt a conforming budget precluded State or county funding of the district (former § 42128), and a district was required to operate under its most recent approved budget (former § 42127.4).

The State argues that by saddling the District with long-term debt to cover short-term operations, the trial court's orders undermine the District's future

financial health and compromise its ability to provide basic educational equivalency in years to come. The State also urges that other districts will feel free to overspend if encouraged to believe in the availability of State relief.

These are indeed troubling concerns, but we cannot accept the implication that the State deems them compelling. In fact, the State itself has endorsed a policy of emergency conditional loan assistance to districts in financial difficulty.

Under statutes in effect since 1977, distressed districts may, through the SPI, seek specific legislative apportionments for emergency loans. (§§ 41310, 41310.5, 41320 et seq.) As a condition of such aid, a district must prepare a financial recovery plan and obtain approval of the plan from the county superintendent and the SPI. (§ 41320.) The district must also accept a temporary SPI-appointed trustee with veto power over financially significant actions of the local governing board. (§ 41320.1.)

The District itself had received a $9,525,000 conditional State loan under this program in spring 1990 (Stats. 1990, ch. 171, § 3), and its operations were already being monitored by a State trustee at the time closure of District schools was threatened in April 1991. The 1989 Legislature had also appropriated $10 million for a similar emergency loan-with-trustee to the OUSD. (Stats. 1989, ch. 1438, §§ 1-11.) Under these circumstances, the State cannot claim it follows a compelling policy of local control by declining to intervene when financial adversity threatens a district's operations.

Shortly before this lawsuit began, the District faced the prospect of further legislative intervention in its crisis. Assembly Bill No. 128, 1991-1992 Regular Session (A.B. 128), as introduced in December 1990 and thereafter amended, would have appropriated an additional $29 million for emergency loans to the District. Acceptance of the proposed loan would have subjected the District to unprecedented restrictions on self-government. These included a temporary takeover of all District affairs by an SPI-appointed administrator pending approval and implementation of a plan for financial recovery and loan repayment. The administrator would have had broad power, among others, to unilaterally determine wages and benefits for all District employees who, as of April 29, 1991, were not covered by ratified collective bargaining agreements meeting the requirements of an approved recovery plan. (A.B. 128, Sen. Amend. of Jan. 18, 1991, §§ 2, 5.)

A.B. 128 failed passage, but that fact does not suggest a compelling policy against emergency State financial assistance to a local district. On the

contrary, the State has forged into the realm of emergency assistance and control, using the "specific appropriation" requirement (§ 41320) to decide on a case-by-case basis whether, and on what terms, it will intervene.

The State claims that emergency assistance to mismanaged districts contravenes the compelling principle of equalized funding established in our *Serrano* decisions. As we have seen, however, nothing in the *Serrano* cases, which addressed wealth-based disparities in district revenues, prohibits emergency State assistance to a particular district which is experiencing financial difficulties despite its receipt of equalized funding.[17]

Finally, nothing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity. To the extent such conditions compromise local autonomy and mortgage a district's future, they are not calculated to persuade local officials or their constituents that mismanagement and profligacy will be rewarded.

Indeed, in response to this case, the Legislature and the Governor have already agreed to tighter county and State control of local district budgets and spending.[18] Under certain circumstances, this new legislation *requires* the SPI's complete takeover of an insolvent district as a precondition of an

[17]The *Serrano* decisions themselves, as well as the subsequent adoption of Proposition 13, have exacerbated the need for occasional emergency State intervention by restricting one aspect of local control—the power of local districts to tax themselves out of financial crises. Our *Serrano* opinions condemned the former dependence of school finance on local ad valorem property taxes, because, as a practical matter, however willing a local district might be to increase taxes for education, "districts with small [real property] tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . . ." (*Serrano I*, *supra*, 5 Cal.3d 584, 598.) In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their State-equalized revenue per average daily attendance. (§ 42238 et seq.) Moreover, Proposition 13 places a general ceiling on the ad valorem property taxes which may be levied on behalf of local governments and school districts. (Cal. Const., art. XIII A, § 1.)

[18]Legislation adopted in 1991 provides, among other things, that if a local district's proposed budget fails to win final county and State approval, the county superintendent of schools shall adopt a governing budget for the district which permits the district to meet current and "multiyear" commitments. The county superintendent may rescind any district action or payment which is inconsistent with the county superintendent's budget, except those

emergency State appropriation.[19] Thus, the State has already made vast inroads on the principle that local control is paramount to State intervention in an insolvent district's affairs. The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

In sum, the California Constitution guarantees "basic" equality in public education, regardless of district residence. Because education is a fundamental interest in California, denials of basic educational equality on the basis of district residence are subject to strict scrutiny. The State is the entity with ultimate responsibility for equal operation of the common school system. Accordingly, the State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so.

The preliminary facts before the trial court support the inference that the District's impending failure to complete the final six weeks of its scheduled school term would cause educational disruption sufficient to deprive District students of basic educational equality. The State has identified no compelling interest which negated its duty to intervene. We therefore find no abuse of discretion in the trial court's conclusion that plaintiffs' constitutional claims had potential merit.[20]

3. *Interim harm.*

The trial court also expressly concluded that plaintiffs, District students and their parents, would suffer "substantial and irreparable harm" if a preliminary injunction were denied. This harm, the court further found,

in performance of a previously effective collective bargaining agreement. (§ 42127.3, subd. (b)(1), as amended by Stats. 1991, ch. 1213, § 18.) The county superintendent must also monitor all local budgets continuously to ensure that each district can meet its financial obligations for the current and ensuing fiscal years. A county superintendent's determination that a district will be unable to meet its obligations triggers a process which may culminate in forced revisions to the district's budget and rescission of actions, other than collective bargaining obligations, which are inconsistent with the revisions. (§ 42127.6, added by Stats. 1991, ch. 1213, § 20.)

[19]New sections 41325 through 41327 provide that when a local district accepts an emergency appropriation more than twice the size of its State-recommended reserve, the SPI must take control of the district for at least two fiscal years, assume all duties and powers of the local governing board, fire district officials who took no action to avert insolvency, impose a recovery plan including a ten-year repayment schedule, and remain in control until satisfied that local compliance with recovery requirements is probable.

[20]Our conclusion that the trial court's finding of probable merit is supported by the equal protection clauses of the California Constitution makes it unnecessary to address claims that a State duty of intervention may also have arisen under the "free school" clause or the Fourteenth Amendment.

would be "greater . . . than defendants will suffer if the injunction is granted."

These determinations were based upon the uncontradicted declarations of District teachers, local and regional public school officials, and academic specialists in the field of public education. Besides detailing the severe and immediate academic disruption which would arise from the pending closure (see discussion, *ante*, fn. 16, at p. 687), these declarations set forth at length the "ripple" effect on District parents and students. For example, the declarations recounted, working parents, including the high percentage of needy families in the District, would be faced with expensive child care for the lost school hours; difficult efforts would be required to obtain other placement of the students for the remainder of the year; and special-need students would lose carefully nurtured progress.

The State submitted no evidence that it would suffer comparable or greater harm by offering emergency loan assistance necessary to ensure completion of the District's academic program for 1990-1991. Instead, the State simply argued that court-ordered State aid would damage the State's public school policies of local control and accountability.

(6) The State nonetheless claims plaintiffs' "interim harm" showing was inadequate as a matter of law. In the State's view, plaintiffs' declarations failed to establish that the early closure was unforeseeable, or to explain persuasively why any adverse effects on student progress could not be ameliorated.

We find the trial court's interim-harm findings amply supported. As previously noted, plaintiffs' preliminary showing suggested that the District's inability to complete its school year arose from its ever-worsening fiscal condition and from the deterioration of its negotiations for emergency aid. The declarations of District teachers uniformly indicated that their lesson plans did not provide for the contingency of early closure. Other declarations detailed the difficulties of alternate arrangements to maintain the educational progress of over 31,000 suddenly displaced District students, who included high school seniors poised for graduation. The court could reasonably infer that orderly planning to minimize the resulting educational disruption had not taken place and was not realistically possible.

In any event, the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means. The preliminary record properly convinced the court *both* that plaintiffs had a reasonable probability of

success on the merits, *and* that they would suffer more harm in the meantime if an injunction were denied than the State would suffer if it were granted. This "mix" of the "interrelated" relevant factors fully justified the court's decision to grant the injunction. (See *Common Cause* v. *Board of Supervisors*, *supra*, 49 Cal.3d at pp. 441-442; *King* v. *Meese*, *supra*, 43 Cal.3d at p. 1227.) No error appears.

4. *Scope of remedial order.*

In orders dated April 29, 1991, and May 2, 1991, the trial court directed the State, the SPI, and the Controller to ensure "by whatever means they deem appropriate" that District students would receive their educational rights; both orders made clear that "[h]ow these defendants accomplish this is up to the discretion of defendants. . . ." When no other State official proposed a solution, the SPI and the Controller, on May 2, 1991, offered a conditional loan plan for approval by the court.

After a hearing on that day, the court found that $19 million in aid funds proposed by the SPI and the Controller were presently available, and the court authorized the Controller to apportion such funds as an emergency loan to the District. The court further determined that, given the State's obligation to provide an equal education, the SPI's statutory authority to "[s]uperintend the schools of this state" (§ 33112, subd. (a)), and the "unique" emergency circumstances, "the [SPI] . . . has authority to relieve the [Board] of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the [D]istrict, and the protection of State funds loaned to the [D]istrict."

(7a) The State and several amici curiae contend that even if the trial court could require State intervention to prevent violation of the District students' constitutional rights, there was no legal or equitable basis for the court's order authorizing the SPI to displace the Board, operate the District through his own administrator, and impose a plan for the District's permanent financial recovery. Under the circumstances presented by this case, however, we conclude that this portion of the court's order did not exceed its powers.

We agree that the statutes themselves provided no direct authority for the approach taken by the trial court. In general, though they act as regulated State agents, local governing boards are vested by statute with immediate jurisdiction over day-to-day district affairs. (§§ 14000, 35000 et seq.) The

SPI has important statutory responsibilities for allocating school funds (§§ 33118, 14000 et seq.), monitoring local budgets (§§ 42120 et seq., 41450), and administering the conditions of emergency loans *appropriated by the Legislature* (§§ 41310, 41320 et seq.; see also § 41325 et seq.), but no statute grants him emergency powers to operate a local district under other circumstances.[21]

The court relied in part on section 33112, subdivision (a), which provides that the SPI shall "[s]uperintend the schools of this state." But no case has interpreted this statute to vest the SPI with nonexpress powers, and an older decision construed similar language narrowly against a county superintendent. (*McKenzie* v. *Board of Education* (1905) 1 Cal.App. 406, 409 [82 P. 392].) Indeed, counsel for the SPI conceded in the trial court that the SPI had no statutory authority to take over the District's government.

The trial court also believed its takeover order was within its inherent equitable power to enforce the State's constitutional obligations in light of the "unique emergency financial conditions" presented by the case. In the court's view, ratification of all loan conditions proposed by the SPI was necessary to ensure the District's continued operation through June 14, 1991, promote its permanent financial recovery, and protect the loan itself. We agree.

(8) In general, courts have equitable authority to enforce their constitutional judgments. (E.g., *Crawford* v. *Board of Education*, *supra*, 17 Cal.3d 280, 308.) Of course, principles of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials. (*Common Cause* v. *Board of Supervisors*, *supra*, 49 Cal.3d 432, 445-446; *Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Serrano II*, *supra*, 18 Cal.3d 728, 751; *Crawford* v. *Board of Education*, *supra*, 17 Cal.3d at pp. 305-306; cf. *Missouri* v. *Jenkins* (1990) 495 U.S. 33, 50-58 [109 L.Ed.2d 31, 53-59, 110 S.Ct. 1651].) In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature.

Moreover, a judicial remedy must be tailored to the harm at issue. (E.g., *Sheet Metal Workers* v. *EEOC* (1986) 478 U.S. 421, 476 [92 L.Ed.2d 344, 388, 106 S.Ct. 3019]; *Dayton Board of Education* v. *Brinkman* (1977) 433

[21]A.B. 128 would have granted the SPI powers of this magnitude over the District, but the bill failed passage. (See discussion, *ante*, at p. 690.) 1991 statutory amendments call for the SPI's takeover of districts that accept large emergency insolvency *appropriations* (§ 41325 et seq.; see discussion, *ante*, fn. 18 at p. 691), but even after 1991, the SPI has no such statutory authority *independent* of a specific insolvency appropriation by the Legislature.

U.S. 406, 420 [53 L.Ed.2d 851, 863-864, 97 S.Ct. 2766].) A court should always strive for the least disruptive remedy adequate to its legitimate task.

(7b) The trial court's remedial order in this case fell within proper boundaries. Having correctly held the State constitutionally responsible for the students' rights, the court could not deny the State and its officials effective means of fulfilling its obligation. Under the circumstances, the court was warranted in authorizing temporary transfer to the SPI of the Board's statutory powers over District affairs.

The emergency the court confronted on May 2, 1991, demanded a prompt State-assisted solution to prevent immediate closure of the District's schools. The State was justified in satisfying its constitutional duty of aid by extending a loan that would impose the ultimate consequences of the District's self-created predicament upon the District, rather than upon the State, its taxpayers, and the students of other districts. The State was also entitled to conditions on the loan that would ensure its appropriate use for the intended constitutional purpose, and would minimize the risk of the District's default in repayment.

The District's ability to administer the new loan under its existing systems and managers was uniquely suspect. As a matter of public record, the District's worsening financial situation had recently led the Legislature to provide a loan in excess of $9 million. A limited-powers State trustee appointed to monitor the District's fiscal affairs in connection with that loan had not been able to stem a growing District deficit estimated by one declarant, a member of the Board, to exceed $23 million for the 1990-1991 school year alone. In response to these difficulties, the Board had caused the District to seek bankruptcy protection against its existing creditors.

As counsel for the SPI explained on April 29, 1991, the District's unprecedented financial collapse indicated systemic management problems. Hence, counsel reported, the SPI considered it foolhardy to extend further substantial State credit to the District unless its management was placed in competent hands, its administrative practices were reformed and restructured from the outside, and a long-term plan for its financial recovery was imposed.[22] On behalf of the State, the Attorney General contested the legality of vesting such extraordinary powers in the SPI, but no party disputed the logic of the SPI's position.

[22]The following colloquy occurred between the court and counsel for the SPI: "[¶] MR. HERSHER [SPI's counsel]: . . . [The SPI] does not want to make . . . 20 to 30 million dollars in state funds available to a district that has already demonstrated substantial financial irresponsibility. It's pouring state money into a hole and it's never going to come back out. [¶] THE COURT: Would he want to do that if the State was given the responsibility for running the district as you suggested? [¶] MR. HERSHER: I believe so. I think what Bill Honig sees is that

Nor can we. Given the emergency circumstances, and under the extreme and aggravated conditions disclosed by the evidence, the court below could properly conclude that orderly completion of the District's 1990-1991 school term, and the sound financing essential to achieve that end, required temporary displacement of the sitting Board and the operation of the District by the SPI's designee for the purpose of stabilizing its financial affairs.[23] We conclude that the order approving temporary takeover of the District by the SPI was within the court's inherent equitable power to remedy the constitutional crisis.[24]

5. *Source of loan funds.*

In order to obtain the necessary $19 million in emergency loan funds, the trial court authorized the Controller to disburse (1) $9 million of unspent funds from a special contingency appropriation to the Department of Education for the GAIN program, and (2) the unused $10 million appropriated as an emergency loan to the OUSD. (9) The State and amicus curiae Pacific argue that because the Legislature had not earmarked either of these sums

the District has to be reorganized. The financial management of the District needs to be completely restructured, and there needs to be a long-term recovery plan . . . . [I]t has always been [the SPI's] position that somebody needs to . . . take over the District, come up with a long-term plan in which all the creditors of the District suffer equally or equitably."

[23]Amici curiae Diaz and Bezemek ask us to receive additional evidence and make findings about the SPI's record as administrator of the District after May 2, 1991. Among other things, Diaz and Bezemek allege that the SPI's administrator has withdrawn the District's bankruptcy petition, dismantled essential programs, failed to reappoint a citizens' advisory committee, restructured the District's administration, dismissed faculty and counselors, obstructed reorganization of the District's existing debt, imposed an unconscionable interest rate on the court-approved loan, and diverted educational funds to debt repayment. Diaz and Bezemek claim this evidence supports their contention that the SPI's governance of the District presents an inherent conflict between his role as protector of State-loaned funds and his duty to restore the District to financial and educational health.

Appellate courts have limited powers to take evidence and find facts in nonjury civil cases. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 909; Cal. Rules of Court, rule 23(b).) However, the matters Diaz and Bezemek seek to present are beyond the scope of this lawsuit and unnecessary to our analysis. Moreover, Diaz and Bezemek concede the proffered evidence is disputed; appellate courts will not resolve such factual conflicts. (E.g., *In re Marriage of Davis* (1983) 141 Cal.App.3d 71, 75-76 [190 Cal.Rptr. 104]; see *McCracken* v. *Teets* (1953) 41 Cal.2d 648, 653 [262 P.2d 561].) We therefore deny the motion.

[24]The State argues that even if extraordinary judicial interference in the District's affairs was necessary to guarantee the constitutional rights of District students, the court erred by granting the SPI extralegal "discretion" to act rather than assuming control over the District itself, with the SPI as the court's appointed agent. The State cites no authority for its proposition that the court's remedial options were so narrowly confined. The remedial order of May 2, 1991, makes clear that the authority therein accorded the SPI flows from a direct and critical exercise of the court's equitable power and jurisdiction over the constitutional dispute. The order laudably minimizes direct judicial involvement in matters best left to officials with specific responsibilities and expertise in education, but its effect is no different than if it had expressly made the SPI a court functionary. We find no error.

for purposes "reasonably related" to resolving the District's financial crisis, the court improperly invaded the nonjudicial power of appropriation.

We agree. In a valid exercise of its constitutional powers, the Legislature had directed each of these sums to specific agencies and narrow purposes which did not include the District and its financial emergency. Hence, the Legislature had not made these funds reasonably available for disbursement to the District. By diverting the funds from their earmarked destinations and purposes, the court invaded the Legislature's constitutional authority.

Article III, section 3 of the Califonia Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Article XVI, section 7 provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Article IV, sections 10 and 12 set forth the respective powers of the Legislature and Governor over the enactment of appropriations. It has long been clear that these separation-of-powers principles limit judicial authority over appropriations. (*Myers* v. *English* (1858) 9 Cal. 341, 349; see *Westinghouse Electric Co.* v. *Chambers* (1915) 169 Cal. 131, 135 [145 P. 1025]; *California State Employees' Assn.* v. *Flournoy* (1973) 32 Cal.App.3d 219, 234 [108 Cal.Rptr. 251]; see also *Payne* v. *Superior Court* (1976) 17 Cal.3d 908, 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].)

In certain narrow circumstances, California courts have concluded that judicial orders for the disbursement of appropriated funds do not invade valid legislative functions. *Mandel* v. *Myers*, *supra*, 29 Cal.3d 531, is the only decision by this court which found judicial power to "commandeer" appropriated funds. The facts and analysis of that case demonstrate the strict limits on the judicial authority it recognized.

The plaintiff in *Mandel*, a Department of Health Services (DHS) worker, had prevailed in litigation challenging DHS's practice of allowing paid employee leave on Good Friday. The judgment against the State included an award of attorney fees. However, the Legislature removed appropriations for payment from successive claims and budget bills, including the 1978-1979 Budget Act (Act). The Act included the usual appropriation to DHS for "general operating expenses and equipment," which expressly included expenses for "services" and "all other proper purposes." Such "catchall" budget categories for State agencies had traditionally been used to pay agency legal expenses. However, the Act expressly precluded use of any appropriation therein "to achieve any purpose which has been denied by any formal action of the Legislature."

We upheld the trial court's order that the Controller pay the fee award from the general operating budget of DHS. We noted first that the "catchall" appropriation was "reasonably" or "generally" available for payment of legal expenses incurred by DHS, because the broad terms of the appropriation, as well as its historical uses, indicated such a legislative intent. In effect, we concluded that the Legislature had voluntarily made an appropriation for payments of this general kind. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at pp. 539-545.)

We further explained that, once having made an appropriation generally available, the Legislature may not impose specific restrictions which are unconstitutionally discriminatory, or which constitute an impermissible legislative attempt to readjudicate the merits of a final court judgment. Hence, we reasoned, the Legislature's attempt to avoid payment of the *Mandel* award in particular must be struck down. The DHS "catchall" appropriation thus remained "available" under its general terms for payment of the judgment. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at pp. 545-551.)

Subsequent Court of Appeal decisions adhered to these principles of *Mandel*. In *Serrano* v. *Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387], attorneys who had won the school-finance class action sought judicial help after the State rebuffed their informal efforts to collect a court-ordered fee award. After *Mandel* was decided, the State conceded that the trial court had properly ordered payment from a "catchall" appropriation to the Department of Education, the SPI, and the State Board of Education for "operating expenses and equipment." (Pp. 197-198.) In *Committee to Defend Reproductive Rights* v. *Cory* (1982) 132 Cal.App.3d 852 [183 Cal.Rptr. 475], the court concluded, after disregarding an unconstitutional budget act provision against use of Medi-Cal funds for abortions (see *Committee to Defend Reproductive Rights* v. *Myers* (1981) 29 Cal.3d 252 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]), that abortion funding could be ordered from monies appropriated for other Medi-Cal pregnancy services. (132 Cal.App.3d at pp. 857-858.)

Plaintiffs and the SPI suggest that two more recent Court of Appeal decisions, *Long Beach Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155 [275 Cal.Rptr. 449] and *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], have expanded *Mandel*'s concept of "reasonable [or] general availability." The trial court in the instant case apparently relied on these decisions to conclude that it could divert the GAIN and OUSD appropriations to the District because they were "generally related" to education.

Long Beach and *Carmel Valley* do make occasional use of the term "generally related" to describe *Mandel*'s principle of reasonable or general

"availability." (See *Long Beach*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) But nothing in those cases supports the trial court's apparent view that funds appropriated for one specific educational purpose may be judicially diverted to another. So far as the face of the opinions discloses, the stated intent of the target appropriation in each case, or its historical uses, indicated that the court's application of the funds was plausibly within purposes the Legislature might have contemplated.[25] No court has suggested that *Mandel* principles permit court-ordered diversion of an appropriation away from a clear, narrow, and valid purpose specified by the Legislature. We affirm that the words "generally related," as used in *Long Beach* and *Carmel Valley*, do not countenance such judicial incursions into the legislative power over appropriations.[26]

The instant trial court misapplied *Mandel* when it authorized the diversion of appropriated funds from the specific purposes and programs for which the Legislature had validly earmarked them. Nine million dollars was taken from an appropriation in the 1989-1990 Budget Act for the GAIN program. (Stats. 1989, ch. 93, § 22.00.) GAIN's purpose is to provide employment, adult

[25]In *Carmel Valley*, the Court of Appeal struck down budgetary language which had been inserted to foreclose the constitutionally required reimbursement of local agencies for expenses incurred in upgrading firefighter protective clothing as mandated by the State. (See Cal. Const., art. XIII B, § 6.) After disregarding these unconstitutional restrictions, the Court of Appeal quite logically determined that funds appropriated to the Department of Industrial Relations for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers, were available for this expense. (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) In *Long Beach*, a local school district sought reimbursement for the State-mandated expenses of developing desegregation programs. After the Legislature deleted an appropriation for this purpose from the 1985-1986 budget bill, the district obtained a trial court order for reimbursement from specified line-item accounts related to education, and from the general operating budget of the Department of Education, which had mandated the programs. The Court of Appeal affirmed on grounds that the record substantially supported the trial court's order. As the Court of Appeal explained, these and similar accounts had historically been used to support programs such as the one for which reimbursement was sought, and were logical sources of funding for this specific purpose. (*Long Beach*, *supra*, 225 Cal.App.3d at pp. 181-182; see also p. 185.)

[26]We are aware that in *Missouri* v. *Jenkins*, *supra*, 495 U.S. 33, the United States Supreme Court upheld the power of federal courts to order local tax levies to enforce judicial remedies for unconstitutional school segregation. However, even if the federal Constitution permits federal courts to impose far-reaching remedies for State government violations of federal constitutional rights, it does not follow that California courts are exempt from the constraints imposed by the California Constitution upon their power to invade the functions of a coequal branch of State government.

Indeed, the California Constitution's separation of powers clause precludes any branch from usurping or improperly interfering with the essential operations of either of the other two branches. (See Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power].) Nothing in this opinion should be interpreted as sanctioning or immunizing such unconstitutional interference, or as addressing the question of the appropriate remedies that may be invoked in the event one branch improperly impinges on the essential operations of a coequal branch.

education, and job training to recipients of public assistance. (Welf. & Inst. Code, § 11320 et seq.) Local school districts can receive GAIN funds for adult education and training classes (*id.*, §§ 11320.8, 11322, 11323), and the Legislature intended that the 1989-1990 GAIN appropriation might include such funding subject to strict conditions (see Stats. 1989, ch. 93, § 22.00, subd. (b)). However, this appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students. Nothing in the trial court's order restricted use of the GAIN-derived funds to uses contemplated by the appropriation.

Similar considerations govern the remaining $10 million of the emergency loan, which was derived from the 1989 Legislature's special appropriation for the OUSD. This appropriation, by its express terms, was "for the purpose of an emergency loan *to* [*that*] [*d*]*istrict* in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code." (Stats. 1989, ch. 1438, § 1, italics added.)

Section 41310 expresses the intent that emergency loans to distressed districts under section 41320 et seq. not occur "unless funds have been *specifically* appropriated *therefor* by the Legislature." (Italics added.) The statutory scheme imposes detailed conditions on emergency loans granted under its auspices (§§ 41320.1-41323), and the Legislature further refined the conditions on the OUSD appropriation to address the particular circumstances of that case (Stats. 1989, ch. 1438, §§ 2-9).

When it makes an appropriation to a specific district, under specific conditions addressed to the problems of that district, the Legislature clearly intends and contemplates that the appropriation will only be used for that purpose, and under those conditions. Hence, the appropriation is not reasonably available for court-ordered diversion to another district under different conditions.

The trial court, understandably anxious to resolve the crisis, concluded that it could fund its order from any monies previously appropriated "for a purpose that is reasonably related to educational purposes." The court found that the GAIN and OUSD appropriations were "reasonably related to the State's obligation to keep the Richmond schools open through June 14, 1991 . . . ."

As we have seen, however, the test of reasonable availability under *Mandel* does not extend to uses clearly outside the particular purpose for which an appropriation was reserved. The GAIN and OUSD appropriations were earmarked for purposes entirely distinct from the subject matter of this

lawsuit.[27] They were not reasonably available for court diversion to finance the remainder of the District's school term.

In her concurring and dissenting opinion, Justice Kennard claims that by flatly disclaiming judicial power to divert appropriations from the purposes specified by the Legislature, we adopt a "formalistic" and outmoded view of the separation of powers. Citing language from two United States Supreme Court decisions (*Mistretta* v. *United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647]; *Nixon* v. *Administrator of General Services* (1977) 433 U.S. 425 [53 L.Ed.2d 867, 97 S.Ct. 2777]), she proposes that interbranch conflicts of this kind be resolved under a "pragmatic" and "flexible" case-by-case balancing test, in which the derogation of one branch's powers by another may be warranted to promote overriding objectives within the "constitutional authority" of the latter. Because both the OUSD and GAIN appropriations were "generally related" to elementary and secondary education, she reasons, diversion of these funds to the District was not a "great" or "extreme" intrusion upon the appropriations power, and the court's action was justified by its constitutional responsibility to District students.

We cannot accept these contentions. Our adherence to *Mandel* can hardly be deemed rigid or formalistic; our decision in that case strained to find a practical, sensitive, and principled balance between legislative and judicial power over appropriations. In effect, Justice Kennard urges abandonment of *Mandel*'s careful analysis in favor of a rule giving the judiciary unchecked power to override the valid budgetary acts of coequal branches.

However, nothing in the California or federal cases on which Justice Kennard relies even hints that a court may *nullify* a *specific and valid exercise* by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches, simply for the purpose of

[27]No party or amicus curiae suggests that the purposes specified by the Legislature for these two appropriations were "improper or invalid . . . restriction[s]" on their use which may be disregarded by the courts. (*Mandel* v. *Myers*, *supra*, 29 Cal.3d at p. 542.) This is not a case where the Legislature, in defiance of the Constitution or the judicial branch, had prohibited use of appropriations for particular purposes to which they would otherwise logically extend.

We recognize that, at the May 2 hearing, counsel for the OUSD indicated his client had "no objection" to diversion of its loan appropriation for the court's purposes. The OUSD's position may not have been entirely altruistic; on April 29, counsel had committed the OUSD to accepting an influx of displaced District students but expressed concern about the disruption such a solution would cause. Even if the OUSD believed that diversion of its appropriation was in its own best interests, however, the OUSD could not unilaterally alter the terms and conditions the Legislature had imposed on the appropriation. Moreover, the OUSD's waiver was conditional; counsel made clear that the OUSD reserved its right to demand refunding of the OUSD appropriation "if and when [the OUSD] chooses to exercise its rights to request a loan from the state of [$]10 million at any time up until June 30, 1993."

satisfying a judgment or order that is *unrelated* to the appropriation. (Compare, e.g., *Mistretta* v. *United States*, *supra*, 488 U.S. 361, 380-384 [102 L.Ed.2d 714, 735-738] [Congress's creation of United States Sentencing Commission, a judicial-branch agency charged with establishing mandatory federal sentencing guidelines, did not usurp authority of individual judicial officers or grant forbidden legislative power to judicial branch]; *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425, 441-446 [53 L.Ed.2d 867, 889-893] [legislation vesting Administrator of General Services with limited control over presidential papers of resigned chief executive did not undermine authority of executive branch]; *Wilson* v. *Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306] [Legislature's failure to reapportion justifies judicial adoption of reapportionment plan]; *Davis* v. *Municipal Court* (1988) 46 Cal.3d 64, 72-87 [249 Cal.Rptr. 300, 757 P.2d 11] [District attorney's statutory power to disapprove local misdemeanor-diversion program was not improper delegation of legislative authority; prosecutor's absolute discretion to prevent diversion by charging "wobbler" as felony did not constitute forbidden judicial power]; *Younger* v. *Superior Court* (1978) 21 Cal.3d 102, 115-118 [145 Cal.Rptr. 674, 577 P.2d 1014] [statute requiring Department of Justice to destroy individual's marijuana arrest and conviction records upon application after sentence is complete did not create impermissible conflict with executive clemency powers].)

The balance proposed by Justice Kennard in this case would elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head. Applying *Mandel*'s well-settled principles, we remain satisfied that the trial court acted in excess of its authority when it funded the District's loan with appropriations specifically earmarked by the Legislature for other purposes.[28]

CONCLUSION AND DISPOSITION

The District's financial inability to complete the final six weeks of its 1990-1991 school term threatened to deprive District students of their

[28]Although the instant record is silent on the point, Justice Kennard worries that there *may* have been no unearmarked educational appropriations available to enforce this trial court's order. She suggests further that such funds *may* also not be available under current laws and budgetary constraints to permit judicial enforcement of students' constitutional rights in similar future cases. These concerns have no practical effect in the instant lawsuit, because the State does not seek rescission of the District's loan, and the educational rights of the District's students are secure. In any event, we cannot overlook the fact that the urgency of the District's crisis denied the Legislature any opportunity to respond to the trial court's injunctive order. Once alerted by the trial court's constitutional ruling, however, the Legislature and the Governor have taken significant steps to prevent or remedy recurrences of the District's crisis. We may not assume they will fail or refuse to respond as necessary to our final determination of the State's constitutional responsibilities.

California constitutional right to basic educational equality with other public school students in this State. As the court further concluded, discrimination of this nature against education, a fundamental interest, could only be justified as necessary to serve a compelling interest. The State itself, as the entity with plenary constitutional responsibility for operation of the common school system, had a duty to protect District students against loss of their right to basic educational equality. Local control of public schools was not a compelling interest which would justify the State's failure to intervene.

The trial court thus properly ordered the State and its officials to protect the students' rights. The court also acted within its remedial powers by authorizing the SPI to assume control of the District's affairs, relieve the Board of its duties, and supervise the District's financial recovery. However, the court invaded the exclusive legislative power of appropriation by approving the diversion of appropriations for GAIN and the OUSD to an emergency loan for the District.

Accordingly, we reverse the trial court's remedial order of May 2, 1991, insofar as it approves funding of an emergency loan to the District from appropriations for the Oakland Unified School District and the Greater Avenues for Independence program. In all other respects, the court's orders of April 29 and May 2, 1991, are affirmed. The Court of Appeal is directed to remand the cause to the trial court for such further proceedings as may be appropriate under the views expressed in this opinion.

Panelli, J., Arabian, J., and George, J., concurred.

LUCAS, C. J., Concurring and Dissenting.—I concur with the majority's conclusions regarding the constitutional obligations of the State of California (State) to assure educational equality. I would not, however, address the propriety of the sources approved by the trial court to provide an emergency loan.

In my view, we need not consider questions regarding the use of the Oakland Unified School District (OUSD) emergency appropriation or the unused appropriation for the Greater Avenues for Independence (GAIN) program because the issues are moot and their resolution will have no impact on the status quo in this case. As the majority notes, at the May 2, 1991, proceeding, the State continued to object to the trial court's order arising out of the April 29, 1991, hearing. That order required the State, Superintendent of Public Instruction (SPI) and Controller, at their discretion and "by whatever means they deem appropriate," to ensure Richmond students were not deprived of six weeks of education provided to other students within California. In addition to renewing its basic position on the merits of the

constitutional arguments, the State also objected to use of the specific funds proposed by the SPI and Controller. It offered no alternative sources of funding and appealed from both orders.

Before us, however, the State does not demand rescission of the court-approved loan or any change in the status of that funding. The funding was granted as a loan and a loan repayment agreement has been worked out by the parties. The State, acknowledging those facts, expressly asserts "We do not argue that the Controller must be compelled immediately to recover the money." In other words, it seeks no relief from the trial court's order granting payment from the challenged sources and compelling repayment of the funds under a prescribed repayment schedule.

Accordingly, as the SPI observes, the matter is moot. The State's response, found in its reply brief, is only that "the trial court in the next case will still be guided by, unless this court disapproves the test, the 'generally related' test set forth in *Carmel Valley [Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 540-541 (234 Cal.Rptr. 795)] and *Long Beach [Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 181-182 (275 Cal.Rptr. 449)]." It does not assert that this issue is capable of evading review because of timing or that a present controversy over the use of these particular funds still exists. Instead, it seeks guidance only for the future. I would decline to render what would essentially be an advisory opinion here. (See *People* ex rel. *Lynch* v. *Superior Court* (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126] ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].)

MOSK, J., Concurring and Dissenting.—I am in general agreement with the views expressed in Justice Kennard's concurring and dissenting opinion.

However, I cannot embrace the ill-advised concession that the trial court's order "did pose a potential for disruption of a function of the legislative branch" although the degree of potential disruption "is not great" and the purported infringement on the legislative function is "not substantial." (Kennard, J., *post*, conc. and dis. opn. at pp. 710, 711.)

The theory of potential interference with legislative functions to any extent is inconsistent with the ultimate conclusion that the funds used for the emergency loan were "reasonably related" to the educational purposes of the legislation, and, indeed, "the trial court's order furthered, rather than defeated, that valid legislative purpose." As persuasively observed in footnote 2, the "funds were appropriated for purposes reasonably and closely related

to the purpose for which the trial court ordered them to be used." (Kennard, J., *post*, conc. and dis. opn. at p. 711.)

Under the foregoing circumstances—with which I agree—there cannot be some conceptual interference, even though "not great," with the functions of the legislative branch.

With that caveat, I join the concurring and dissenting opinion.

KENNARD, J., Concurring and Dissenting.—I agree with the majority that the threatened closure of the schools of the Richmond Unified School District (District) was such an extreme departure from prevailing educational standards as to infringe on the students' state constitutional rights to basic educational equality, requiring the State of California (State) to intervene to protect those rights.

I do not agree, however, that the trial court violated the separation of powers doctrine by ordering that emergency loan funds be made available from an unused special appropriation to the Department of Education and an unused emergency appropriation to the Oakland Unified School District (OUSD). The majority has, in effect, declared that although the students' right to education is fundamental, no means may exist by which our judicial system can enforce that right. In my view, the trial court's order was an appropriate and pragmatic resolution of a difficult case under extreme pressure. Because the Legislature had already appropriated the funds in question for educational purposes reasonably related to the District's needs, I discern no constitutional violation, and would affirm the trial court's orders in their entirety.

I.

On April 17, 1991, the District, facing a $23 million budgetary shortfall, announced its schools would close on May 1, 1991, rather than as scheduled on June 14, 1991. Parents of students in the District's schools then filed a class action against the State and the District's board of education, alleging the closure would deprive children of their fundamental right to education and would violate equal protection guarantees. The trial court granted plaintiffs' motion for a preliminary injunction, finding that "education is a fundamental right in California [and] unless injunctive relief is granted children in the District will be denied six weeks of instruction that will be provided to every other child in the State." The trial court ordered the State, the Superintendent of Public Instruction (Superintendent), and the State Controller "to ensure that the students in the District are not deprived of six

weeks of public education while others within the state are not so deprived." The trial court added that "how these defendants accomplish this is up to the discretion of the defendants."

Thereafter, the Superintendent and the Controller proposed a plan to keep the schools open. They proposed that $19 million in unspent funds from two educational programs—from the Greater Avenues for Independence (GAIN) program and from an appropriation to the OUSD—be loaned to the District. After an evidentiary hearing, the trial court ordered the State Controller to disburse an emergency loan to the District from these funds. This court denied the State's motion to stay the order pending appeal, but transferred the case here.

II

The majority holds that the trial court's remedial order violated the doctrine of separation of powers. Essentially, the majority reasons that by ordering that the unused funds be loaned to the District, the trial court impermissibly engaged in the appropriation of funds, an area of exclusive legislative concern.

The majority's conclusion originates from a fundamental misunderstanding of the separation of powers doctrine. Implicit in the majority's discussion is the assumption that under our tripartite scheme of government, particular powers can be definitively categorized as belonging to one of the three branches, and that these powers can never be exercised by a branch other than the designated branch. Thus, under the majority's approach, appropriation is exclusively a legislative function, and unless the Legislature has either appropriated funds for a specific purpose, or made a "catchall" appropriation under which a specific use of funds may fall, funds are simply not available for any purpose, no matter what rights are at stake.

This formalistic interpretation of the separation of powers concept is, however, contrary to modern understanding. The opinions of the United States Supreme Court, although not binding on this court in interpreting the separation of powers principles of the California Constitution, supply a persuasive body of case authority. Just as our state Constitution provides for the separation of the powers of government into three branches (Cal. Const., art. III, § 3), so does the federal Constitution segregate the branches of government (U.S. Const., art. I, § 1, art. II, § 1, & art. III, § 1).

The United States Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the

three branches." (*Nixon* v. *Administrator of General Services* (1977) 433 U.S. 425, 443 [53 L.Ed.2d 867, 891, 97 S.Ct. 2777].) Rather than reading the federal Constitution as " 'requiring three airtight departments of government,' " the high court has adopted a "pragmatic, flexible approach." (*Id.* at pp. 443, 442 [53 L.Ed.2d at pp. 891, 890-891.) This approach, the court has explained, is supported by historical understanding. James Madison, one of the principal architects of the United States Constitution, wrote that the concept of separation of powers " 'd[oes] not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other,' " but instead that " 'where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.' " (J. Madison, The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961) (original italics), quoted in *Mistretta* v. *United States* (1989) 488 U.S. 361, 380-381 [102 L.Ed.2d 714, 735-736, 109 S.Ct. 647].) Thus, the basic purpose of the separation of powers is to guard against the concentration of power in the hands of one branch, but it is important to distinguish "partial agency" from those aggrandizements of power that pose genuine threats to the constitutional scheme.

The pragmatic and flexible approach favored by the nation's highest court is also appropriate because, in a society growing ever more complex, the practical requirements of efficient government action by each of the three branches must be considered. " 'While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.' " (*Mistretta* v. *United States*, *supra*, 488 U.S. at p. 381 [102 L.Ed.2d at p. 736], quoting *Youngstown Sheet & Tube Co.* v. *Sawyer* (1952) 343 U.S. 579, 635 [96 L.Ed. 1153, 1199, 72 S.Ct. 863, 26 A.L.R.2d 1378] (conc. opn. of Jackson, J.).) In contemporary society, concerns about the workability of government are especially weighty.

Thus, the high court has not evolved a rigid classification of governmental powers as belonging exclusively to one branch or another. Instead, the court has stated that "the proper inquiry focuses on the extent to which [the act complained of] prevents [one of the three branches] from accomplishing its constitutionally assigned functions." (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383 [102 L.Ed.2d at pp. 737-738].) If the "potential for disruption is present," the court must then "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53

L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

This court has expressed a similar understanding. We have recognized that the purpose of the doctrine of separation of powers "is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch. [Citation.]" (*Younger* v. *Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014] [original italics].)

More recently, this court reiterated that the separation of powers doctrine " 'has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another.' . . . 'From the beginning, each branch has exercised all three kinds of powers.' " (*Davis* v. *Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11] [citations and italics omitted].)

III

A line of cases from California courts has established the principle that a court does not violate the separation of powers doctrine when it orders appropriate expenditures from already existing funds, if such funds are reasonably available for the expenditures in question. (*Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Long Beach Unified Sch. Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 180-181 [275 Cal.Rptr. 449]; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 538-539 [234 Cal.Rptr. 795]; *Committee to Defend Reproductive Rights* v. *Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) The precise question in this case is whether funds can be considered "reasonably available" when they are not made part of a "catchall" appropriation under which the specific use of the funds may fall. The majority concludes that unless the funds are part of a "catchall" appropriation, they are not reasonably available.[1]

I would announce no such categorical rule. In my view, the proper inquiry is that set forth by the United States Supreme Court in *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta* v. *United States*,

[1]The majority purports to reaffirm the rule of these cases, but in fact undermines it. The "catchall" appropriation exception to the majority's rule could easily be eliminated if the Legislature took the time to label more specifically the purpose of each appropriation in a particular area. If the Legislature did so, there would be no possible remedy for the failure to fund any program, no matter how essential.

supra, 488 U.S. 361: To what extent does the challenged act of one branch interfere with another branch's performance of its constitutionally assigned functions? If there is some potential disruption, the court must then determine whether the challenged act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

Applying the principles followed by the high court in *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta* v. *United States*, *supra*, 488 U.S. 361, and by this court in cases such as *Younger* v. *Superior Court*, *supra*, 21 Cal.3d 102 and *Davis* v. *Municipal Court*, *supra*, 46 Cal.3d 64, I conclude that the trial court's order authorizing the Controller to disburse funds from the GAIN and OUSD accounts as an emergency loan to the District to assure the District's schools remained open did pose a potential for disruption of a function of the legislative branch.

The degree of potential disruption, however, is not great. As the trial court concluded, the funds that were the source of the emergency loan were appropriated for purposes reasonably related to the educational purposes served by the District.

The OUSD loan funds were appropriated by the Legislature for the precise purpose for which they were employed here—to alleviate a fiscal crisis in a local school district and prevent disruption of an ongoing educational program. (See Stats. 1989, ch. 1438, § 1.) Moreover, the trial court had before it an application for leave to intervene from the OUSD itself, in which the OUSD stated that the threatened closure of the nearby District "would place substantial and difficult burdens on OUSD as displaced Richmond students seek admission to Oakland Schools," that would be "extremely costly and disruptive" to the operation of the Oakland schools. The emergency loan fund for the OUSD was intended by the Legislature to avoid disruption of the educational program at the Oakland schools, and the trial court's order furthered, rather than defeated, that valid legislative purpose.

The GAIN program was enacted to address the problem of teenage parenting, basic educational deficiencies, and long-term welfare dependency. Specifically, GAIN was intended to "[p]rovide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent," and to "[l]ink teenagers to other needed health and social services." (Welf. & Inst. Code, § 11330, subd. (c).) The purpose of the particular appropriation to the Department of Education at issue in this case

was solely to meet educational needs, and not to provide health and social services. (Stats. 1989, ch. 93, § 22.00.) This goal is served by keeping the District's schools open. The trial court had before it uncontradicted evidence that a large number of the students in the District came from low-income families, many of whom were welfare-dependent. The court could rationally conclude that the otherwise unused GAIN funds were reasonably available to meet the basic educational needs of the District's students, a significant portion of whom were in the welfare-dependent population the GAIN program was targeted to assist. Under the circumstances, the funds were ordered to be used for a purpose reasonably congruent with the statutory purpose.[2]

Thus, because the trial court authorized the OUSD and GAIN funds to be used for a purpose that was reasonably related to the purposes for which the funds were appropriated, any infringement on the legislative function is not substantial. By contrast, we are not faced with a situation in which a trial court has ordered that funds appropriated for one purpose be used for some entirely unrelated purpose; nor are we confronted with a trial court order that funds actually in use for one program be diverted to another. It is vital that

[2]The majority asserts that this opinion "urges abandonment" of the rule of *Mandel* v. *Myers*, *supra*, 29 Cal.3d 531 (*Mandel*). This is incorrect.

In *Mandel*, *supra*, 29 Cal.3d 531, this court held that the separation of powers doctrine does not prevent the courts from ordering appropriate expenditures from already existing funds when such funds are "reasonably available for the expenditures in question . . . ." (*Id.* at p. 542.) There, the court found that certain "catchall" funds were reasonably available for the expenditures in question, the payment of attorney fees in a case enforcing constitutional rights. But nothing in *Mandel* indicated that the only funds that might ever be reasonably available in any case were "catchall" funds. And, as later cases made clear, *Mandel*'s test of "reasonable availability" encompasses unused funds that have been appropriated for purposes closely related to the purposes for which they are sought to be expended. (*Long Beach Unified Sch. Dist.* v. *State of California*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley Fire Protection Dist.* v. *State of California*, *supra*, 190 Cal.App.3d at p. 541.)

In this case, as my analysis has demonstrated, the OUSD and GAIN funds were appropriated for purposes reasonably and closely related to the purpose for which the trial court ordered them to be used. Thus, *Mandel* and its progeny were not violated. The analysis in this opinion is entirely consistent with both the *Mandel* line of cases, and the cases from the United States Supreme Court and this court that more fully and generally articulate the doctrine of separation of powers. *Mandel* and its progeny represent an area of specific application of general separation of powers principles; properly understood, there is no disjunction between the *Mandel* line of cases and cases such as *Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. 425, and *Mistretta* v. *United States*, *supra*, 488 U.S. 361, that set forth a principled and coherent view of the separation of powers doctrine.

Thus, the majority's accusation that the approach to separation of powers questions set forth in this opinion, which is the same approach employed by our nation's highest court, would "stand the separation of powers clause on its head," is meritless.

trial courts take care to minimize any impingement on legislative prerogatives. But the trial court in this case did use the least intrusive means available to it to ensure the students' rights.[3]

As discussed earlier, if there is some cognizable interference with the functions of another branch, the reviewing court must then determine whether the act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon* v. *Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta* v. *United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].) In my view, here the trial court's order was so justified.

The objective that the trial court sought to achieve by its orders in this case—to assure the protection of the fundamental rights of the District's students—was unquestionably within its constitutional authority. As this court has made clear on previous occasions, and as the majority reaffirms today, education is a fundamental right under the California Constitution. (*Serrano* v. *Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Serrano* v. *Priest* (1976) 18 Cal.3d 728, 766 [135 Cal.Rptr. 345, 557 P.2d 929].)

Moreover, the court, in acting to protect the students' rights to education, had no practical alternative to the remedial order it issued. It was the court's

[3]At the hearing on the preliminary injunction, an official of the Department of Education testified without contradiction that there were two sources from which department funds were available that could be employed to assist the District—the OUSD fund and the GAIN fund. No other funds were identified as available.

The funds appropriated to the Department of Education for the general support of elementary and secondary schools are not placed in a "catchall" fund subject to the discretion of Department of Education officials. Instead, under the Education Code, virtually all sums transferred from the state's general fund to the Department of Education for the general support of elementary and secondary education are transferred subject to a strict formula under which each local district is entitled to an amount computed on the basis of average daily student attendance. (Ed. Code, § 14000 et seq., § 46000 et seq.) No state official appears to have any discretion to vary the legislatively mandated allocation of funds.

My research reveals that the only funds that might have been considered reasonably available to aid the District under the majority's criteria at the time of the trial court's decision in this case were certain emergency funds under control of the Director of Finance. (Stats. 1990, ch. 467, § 2.00.) But there is nothing in the record to show that these funds had not been used for some other emergency purpose. Even assuming that none of these funds had been committed to some other use, however, the funds would have been grossly inadequate to meet the District's needs in any event. The total amount of funds available to the Director of Finance to meet all the emergency needs of the State under the then-current budget was $7 million. (*Ibid.*) As we have seen, the District faced a $23 million budget shortfall.

duty to act. As the United States Supreme Court has held, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." (*Reynolds* v. *Sims* (1964) 377 U.S. 533, 566 [12 L.Ed.2d 506, 530, 84 S.Ct. 1362].)

When the other branches of government have failed to act, the courts have not flinched from their duty to fashion appropriate remedies when necessary to guarantee constitutional rights to the people of this state. Thus, in *Wilson* v. *Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306], we held that, although reapportionment is primarily a matter for the legislative branch, when that branch has failed to act and electoral rights will be irretrievably lost if no action is taken, "we must proceed forthwith to draft such [reapportionment] plans." And in *Crawford* v. *Board of Education* (1976) 17 Cal.3d 280, 307 [130 Cal.Rptr. 724, 551 P.2d 28], we held that when a recalcitrant school board failed to act to cure the harmful consequences of school segregation, the trial court could exercise "broad equitable powers" to frame a remedy that would assure the students' basic rights. (Accord, e.g., *Swann* v. *Board of Education* (1971) 402 U.S. 1, 15 [28 L.Ed.2d 554, 566, 91 S.Ct. 1267]; see *Assembly* v. *Deukmejian* (1982) 30 Cal.3d 638, 659 [180 Cal.Rptr. 297, 639 P.2d 939]; *Midway Orchards* v. *County of Butte* (1990) 220 Cal.App.3d 765, 779 [269 Cal.Rptr. 796].)

No sound reason exists to hold that although some fundamental rights demand judicial protection when they are endangered because the other branches of government have failed to act, other rights, equally fundamental, do not. Yet that is the consequence of the majority's holding in this case that the trial court erred in ordering that an emergency loan be made to the District.

The practical consequences of the majority's holding should not be overlooked. In an era of fiscal constraint and uncertainty for local governments, including school districts, we cannot assume that the District's problems will prove to be unique. If another school district experiences financial difficulties and the other branches of government fail to act, parents may indeed bring a lawsuit to protect their children's right to education. Under today's decision, the trial court will declare that the children have a constitutional right to basic educational equality, and that the State bears responsibility for assuring this right is not denied. The court may then announce that no means

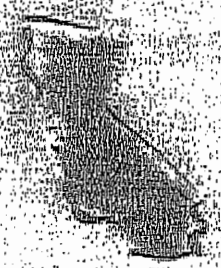
exist by which it can enforce that right. And the doors to the schoolhouse will close.

I would affirm the orders of the trial court in their entirety.

EXHIBIT B

CRB - SCHOOL FACILITY FINANCING

CRB



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School Facility Financing

A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds

By Joel Cohen

Prepared at the Request of Senator Quentin Kopp

FEBRUARY 1999

CRB 99-01

CALIFORNIA RESEARCH BUREAU

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EXECUTIVE SUMMARY

As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand. Recognizing the substantial need for infrastructure, in November 1998, California voters passed Proposition 1A, a bond measure that provides $6.7 billion for public K-12 school construction and repair.

This measure establishes two new programs for the disbursement of bond funds and simplifies the application process by which schools apply for school construction resources. This change in programs, and in the methods by which funds are allocated, is important to the people of the State, as school districts, many of which have facilities in serious disrepair or require new construction, vie for their portion of the $6.7 billion pie.

Historically, the process by which schools applied for and received construction funds was cumbersome and complex. Furthermore, the research suggests that school districts that were sophisticated and knowledgeable about the complicated school facilities construction process were the most successful in securing funding – often at the expense of less sophisticated and uninformed school districts. Proposition 1A corrects much of this dynamic by simplifying the application and administrative processes, thereby creating a more level playing field for all school districts.

In order to understand the significance and relevance of this new process and its concomitant programs, however, it is useful to review the history of school construction financing in California and to understand the various pitfalls that existed under previous programs so as to avoid similar pitfalls in the future. This paper discusses that history and highlights the problems with preexisting programs.

It begins with an examination of the State Allocation Board and its staff (the Office of Public School Construction). Specifically, it reviews the role of the Board which is responsible for establishing policies for the distribution of school facility financing funds. It discusses how the Board, which was established in 1947, has evolved during the past five decades from one that set policy for various *loan* programs to one that today sets policy for *grant* programs.

The paper also discusses how various externalities—legislative or voter imposed initiatives, such as Proposition 13—have affected the Board's policies and procedures. The paper notes that the Board changed its policies often, and its policy shifts created an untenable dynamic for school districts as they attempted to secure funding. In particular, the paper highlights how districts were forced to weave their way through a complex, bureaucratic maze of applications, forms, and plans; and how this dynamic forced school districts to employ sophisticated personnel, or to contract with savvy consultants, in order to secure state financing for their construction projects.

This paper also presents a history of bond initiatives during the past five decades. It is clear that throughout this history there was never enough State money available to school districts for facility construction or repair. In fact, in spite of the $6.7 billion approved by Proposition 1A, experts estimate that an additional $10 billion will be required during the next decade. This paper discusses how the constant shortage of funds caused districts to use "whatever" means available to them to secure funding.

Voters have consistently been generous in approving the vast majority of statewide bond initiatives. Only three bond proposals out of 24 have failed in the past 50 years, and those that failed did so during times of recession. However, it is not clear how much additional debt voters will be willing to incur. This has especially been true since the passage of Proposition 13 in 1978, when the State began taking on a larger role in supporting school construction then it had before. To that end, this paper discusses how Proposition 1A creates a mechanism for school districts to tap state resources, and how school districts may need to tap other sources of facility funding.

Proposition 1A forges a partnership between the State and school districts for financing the construction and repair of their schools. Under its new programs, the State will provide 50 percent of the cost associated with building new schools, and provide 80 percent of the cost associated with modernizing existing facilities. It requires school districts to match state resources. However, school districts that are unable to offer this match can receive hardship funds based on prescriptive criteria. This paper provides details regarding these new programs and compares them to programs previously administered by the State Allocation Board. It also discusses how the Board is required to respond to district requests.

Proposition 1A is not the only impetus behind simplifying the school facility financing process. Concurrently, the Office of Public School Construction has rewritten the application process for funds to make it more user-friendly to school districts and has even offered applications and program information via the Internet. This paper discusses these changes.

The paper concludes with options that the Governor and the Legislature may wish to consider, including: offering protection to small and rural school districts when bond funds are exhausted; requiring annual financial reporting by the State Allocation Board; providing an on-line technical support for program applicants; and redeveloping the State funding source for school facility construction and rehabilitation.

REQUEST FOR RESEARCH

Programs and administrative procedures in Proposition 1A may produce significant changes to the previous programs and the manner by which the State Allocation Board distributes resources for school facility construction. In light of these changes, Senator Quentin Kopp requested that the California Research Bureau provide research on the following topics:

- A history of the State Allocation Board. How was the board's funding program intended to work and how has it evolved?

- An explanation of the State Allocation Board process. How does the State Allocation Board work? What are the procedures and criteria for receiving allocations? How are priorities set?

INTRODUCTION—THE PASSAGE OF PROPOSITION 1A

On November 3, 1998, California voters passed Proposition 1A - a $9.2 billion school bond initiative, and the largest of its kind passed in our nation's history. Over the next four years, revenues from Proposition 1A's general obligation bonds will provide $6.7 billion to public K-12 schools and $2.5 billion to public colleges and universities for the purposes of constructing new facilities and repairing existing ones.

The State Allocation Board will have the responsibility for determining a fair means of distributing the $6.7 billion available to K–12 schools. Many experts feel that developing such a system will be a daunting task, in spite of the fact that Proposition 1A/Senate Bill 50 is very prescriptive regarding the allocation of its bond funds.

This paper begins with a history and a discussion of the role of the State Allocation Board. Next, it examines the 24 state bond initiatives since 1947 and discusses how the Board has evolved its policies for distributing resources generated by these bond efforts. It then presents an overview of Proposition 1A and how this initiative creates a new allocation program that differs from previous ones. The paper also discusses the various problems that existed within the State Allocation Board's previous resource allocation systems and how Proposition 1A addresses these problems. It concludes with a section that offers options that the Legislature may wish to consider regarding the policies that the State Allocation Board should use for the equitable distribution of bond funds.

HISTORY OF THE STATE ALLOCATION BOARD AND ITS ROLE IN SCHOOL FACILITY FINANCING

There is a long and complex history regarding public school construction in California. This paper begins a review of the history in 1947[1] when the state legislature created the State Allocation Board.[2] Chapter 243, Statutes of 1947, established the State Allocation Board[3] as a successor to the Post War Public Works Review Board. That statute specifically authorized the board to allocate funds for building and repairing schools. In addition, it designated the State Allocation Board to make allocations for public works projects when no other state officer or agency had authority to appropriate state or federal funds.[4] Although it had many other fund allocation requirements during its five-decade history, the State Allocation Board today allocates funds only for school construction and renovation.

Composition of the Board

The State Allocation Board is comprised of seven members: two Senate members appointed by the Senate Rules Committee; two Assembly members appointed by the Speaker of the Assembly; the Director of the Department of General Services or his/her designee; the Director of the Department of Finance or his/her designee; and the Superintendent of Public Instruction or his/her designee. This appointment structure has existed since the Board's inception in 1947.[5]

Although its basic appointment structure is set in statute, its actual membership changes over time. One member, Senator Leroy Greene, served on the Board for over 20 years. Some Board members have served for only one meeting, while others have served an entire legislative session.

The four legislatively appointed State Allocation Board members provide a strong policy influence to the State Allocation Board. Through them, other members of the Legislature have input into the Board's policy and decision-making processes.

Policy Requirements

Members of the State Allocation Board are charged to formulate fair systems for determining priorities among project proposals. Prior to the passage of Proposition 1A/SB 50 in 1998, the Board was responsible for developing a fair and equitable appeals process that addressed the "special needs" of school districts. Such "special needs" included disaster relief, inability to secure matching funds, or inability to locate affordable property.

Board members also had extraordinary power to set school facility financing policy. Although the Board falls under the auspices of the State Administrative Procedures Act, it has often ignored the Act's provisions. It was common that board policies were changed from meeting to meeting, and that these new policies were not readily made public.[6] Therefore, school districts that were uninformed of existing policy operated at a distinct disadvantage. They may not have known the appropriate procedures for receiving

financing approval. Conversely, school districts that utilized hired consultants or had staff that regularly monitored the Board's actions knew exactly what mechanisms and procedures would be necessary for them to secure funding.

State Allocation Board Staff

The Office of Public School Construction (formerly the Office of Local Assistance), within the Department of General Services, was and continues to be responsible for providing staff work that is necessary to carry out the policies and implement the various programs of the State Allocation Board. The State Allocation Board is responsible for policies regarding the allocation of funds for building new schools and for repairing, upgrading, and rehabilitating old ones.

The Office of Public School Construction staff is also responsible for disseminating to school districts information regarding board policy and programs. Under its previous programs, the staff was responsible for making recommendations to the State Allocation Board regarding various appeals made by school districts that may have been denied funding, or that may have required special funding consideration. To that end, the Office of Public School Construction staff influenced where school districts fell on the long queue of project proposals considered and passed by the State Allocation Board. Staff also could have influenced Board decisions by advocating for specific school district projects.

Outside Influence

The State Allocation Board and the Office of Public School Construction staff have also been influenced by a variety of external interest groups. These include, but are not limited to, private school facility financing consultants, school board members, school administrators, teachers, parents, developers, California Building Industry Association, financial institutions, and other members of the Legislature. In addition, various state agencies with influence included the Division of State Architect, Department of Finance, and the Department of Education. These interests groups played and are likely to play a significant role in determining funding for projects that may have been denied or required special consideration. Consultants in particular, whether employed by or on contract with school districts, played an active role in the process. Many of these consultants, whose offices are in the same building as that of the Office of Public School Construction, influenced decisions of both the Office of Public School Construction staff and the State Allocation Board. Consultants were current on Board policies and procedures, and were highly sophisticated about the complicated processes that school districts must follow in order to obtain funding. They have been instrumental in shepherding proposals through the complex maze of funding phases - application to construction. School districts that did not contract with such advocates were often at a competitive disadvantage.

Evolution of State Allocation Board Programs—From Loans to Grants

The State Allocation Board has evolved markedly during the past five decades. Initially, its school programs provided resources to school districts via *loan programs* in which

districts were required to repay their assistance with property tax revenues. In addition, school districts used local school bonds to finance their various construction projects. In both cases, a two-thirds popular vote was required.

Proposition 13

With the passage of Proposition 13 in 1978, the State Allocation Board's loan orientation was significantly altered. Under Proposition 13, the amount of tax that property owners paid was limited to no more than one percent of the assessed value of their property. Local property tax revenues diminished, and the burden to fund many local government programs was shifted to the State, including public school construction. Further, local governments lost much of their property taxing authority, and the Legislature and Governor were forced to rethink how school districts could repay their existing loans to the State Allocation Board.

Recognizing that many school districts faced bankruptcy by being unable to service their loans, the Legislature in 1979 directed the State Allocation Board to allow school districts four options: (1) withhold payments on their loans; (2) temporarily delay their payments; (3) pay only a portion of their loan obligations; (4) or not pay back their loans at all. Further, with the implementation of these options, the Legislature required that the State Allocation Board shift its policy focus from a *loan-based* program to a *grant-based* program. This shift to grant-based programs remains today.

HISTORY OF SCHOOL BOND INITIATIVES—A CYCLE OF UNDER-FUNDING

The electorate of the state has been ultimately responsible for determining the availability of resources for school construction. The electorate must have confidence in the state's economy, and perceive a need for new and upgraded schools. Without such assurances, the electorate can and has rejected various bond efforts. Since 1949, voters have been asked to approve 24 bond measures related to school construction and renovation, and have passed 21 of these proposals. However, an interesting history follows regarding the content of these initiatives.

State as a Bank—The Loan Program 1949-1978

Legislation enacted in 1949[7] and 1952[8] established a loan-grant program "to aid school districts of the State in providing necessary and adequate school sites and buildings for the pupils of the public school system."[9] During this time period, the first baby boomers entered school, and for the next two decades, California public school enrollment increased by roughly 300 percent.[10] The Legislature recognized that many school districts faced substantial enrollment growth, while lacking the bond debt capacity that was necessary to finance large building programs. In fact, many school districts had reached their financial capacity to service the bonds that they previously incurred.

As a result, the Legislature developed a program to provide loans to school districts that were approaching or were likely to exceed their legal level of bonded indebtedness.[11] This new program was financed through State general obligation bonds. This program also required building construction standards and placed fiscal controls on the districts, including maximum cost standards and square feet per pupil limitations.[12] School districts, however, retained control over the design and construction of their facilities. Districts that wanted to participate in the state loan program were required to receive approval from two-thirds of their district's electorate in order to incur the debt. A surcharge on the local property tax provided revenues to service the loan debt.

The State formula provided that the total amount due on some loans would be less than the total amount of the actual loan. Some experts believe that the state's willingness to forgive part of school district loans through this formula was a precursor to the state grant program discussed below.

The First Loan Program Bond Initiatives

In 1949, the state issued its first bond proposal for education facilities financing[13] in the amount of $250 million.[14] This first initiative also began a cycle of inadequate funding. In that year, the Legislature thought that $400 million was necessary (over what school districts could afford above their debt limits) to meet the need of school districts that were facing enrollment growth from the new generation of baby boomers. However, after substantial debate, the bond proposal was reduced to $250 million, because the sponsors thought, "the people would not vote for such a large sum at one time."[15] In arguments

against the bond, opponents argued that $250 million was insufficient. Therefore, absent full funding, voters should reject the initiative. The measure passed.

In 1952, another school construction bond of $185 million was put before the voters. Proponents of this initiative stated that the amount was "extremely" conservative. A comprehensive study by the State Department of Education at that time revealed that $198 million was needed, while the Department of Finance estimated the need at $250 million. Again, the amount of needed resources surpassed the amount proposed, and the cycle of chronically under-funded facility financing for schools continued.

To further exacerbate the shortfall, the 1952 proposition, along with subsequent propositions offered in 1956, 1958, and 1960, included "poison pill" language that limited the Legislature's ability to appropriate any additional funds for school construction beyond that in the various propositions.[16] If the Legislature approved any additional resources for school construction, the amount of bonds that were sold would be reduced by an amount equal to the additional appropriation. After 1960, however, bond proposals excluded the language that precluded the Legislature from raising additional capital outlay funds.

During a two-decade period, the State Allocation Board administered this program as a bank. Resources from the state were limited, and many school districts were uncomfortable with the concept of borrowing money from the state, rather than from their local constituents. Further, since school districts were obligated to reach full bond indebtedness before applying for state loans, many did not participate. For these reasons, many school districts chose not to build facilities until their bonding capacity grew. Hence, many school districts found themselves chasing dollars after their schools were overcrowded—a situation not unlike today.

The Early 1970s

As a result of a major earthquake in the San Fernando Valley (Sylmar) in 1971, the state authorized $30 million[17] for a new program to finance the rehabilitation and construction of earthquake safe schools,[18] and for the renovation of buildings that the earthquake damaged.[19] This program was known as the School Buildings Safety Fund. Like its predecessor programs, the 1971 Act created a state loan program for eligible school districts. The Act also included provisions to forgive loans for school districts that had reached their bonding capacity. The 1971 program was augmented by a 1972 state bond initiative of $350 million of which $250 million was set aside for structural repairs due to earthquakes.[20] This latter bond initiative also provided a method for financing buildings in districts that did not meet the criteria of the program that was initiated in 1971,[21] and it required the State Allocation Board to first approve those applications from school districts for earthquake repairs. The State Allocation Board gave second consideration to funding projects for other types of repairs or upgrades. Hence, the Board began a new system for not only new construction but also repairs, as well as a system that set priorities.

A Changing Paradigm

From 1970 to 1980, public school enrollment statewide decreased by roughly one percent per year.[22] Reductions in both immigration and domestic in-migration to the state, as well as a decrease in the state's birth rate caused this decline. During this decade, there were sufficient resources available from local property tax revenues and from the state's loan program to meet the various rehabilitation needs especially of those school districts that were experiencing enrollment declines. The State Allocation Board thus shifted its loan program emphasis from new construction to rehabilitation, and to upgrading unsafe facilities that were damaged due to the 1971 earthquake.[23]

Nevertheless, some school districts continued to experience enrollment growth in response to suburban housing development.[24] In spite of such growth patterns, the State Allocation Board set its priorities to favor rehabilitation projects over new construction. The Board's orientation accentuated the differences between growing school districts and those that required rehabilitation, and caused an unequal state spending system that favored property rich urban districts over fiscally poor and growing suburban districts.[25]

To counter the State Allocation Board's orientation toward urban rehabilitation, growing suburban school districts recognized that in order to fund new school construction, they would have to depend almost entirely on their local property tax base. As more people demanded affordable housing in suburban neighborhoods, developers accommodated them by building numerous suburban housing units. The sheer increase in the number of suburban homes added significant resources to the property tax base, thereby benefiting the school districts that served those communities. Furthermore, the ongoing demand for suburban housing caused the prices of homes in these areas to increase precipitously, adding even more resources to the property tax base. Although school districts could have requested to reduce those tax rates that supported them to a minimum amount, they did not. Most districts kept their rates steady, and some even increased them. Homeowners, unhappy about menacing property taxes, sought relief. In 1972, the Legislature enacted a multi-year package, funded by the state's general fund, of $1.2 billion for school operation to be allocated over a three-year period and to serve as property tax relief.[26] In spite of this legislation, property taxes remained relatively high to cover local bond debt, and continued to be the primary source for school construction for growing school districts. Concurrently, the state continued to loan money to enrollment-static school districts for the purpose of rehabilitation.

Leroy Greene State School Building Lease Purchase Law

In 1976, the Leroy Greene State School Building Lease Purchase Law was signed into legislation.[27] This law established a state fund to provide loans to school districts for reconstruction, modernization, and replacement of school facilities that were more than 30 years old. The Act significantly altered the state's role in how school facilities construction was financed. Specifically, the state would no longer loan money; but it would finance school construction based on a leasing model.[28] Although the legislation was passed, the voters of the State remained unconvinced that more money was needed to

improve schools. Consequently, they did not pass the bond initiative that was necessary to fund the Lease Purchase Program.

The 1976 Act had specific language that created "priority points" for school districts that would apply for state funding. This was the first time that the State Allocation Board used a point system for creating a queue of approved projects. Priority points were given based on the number of unhoused students in the district, the rate of student enrollment growth, and how much rehabilitation a facility needed. Further, the Board instituted a first-come, first-served policy in which each accepted school district's application was stamped with a time and date.

Under the previous program, the state loaned money to school districts to build their facilities, and the school districts owned their property. Under the Greene legislation, however, the State maintained a lien on the property for the duration of the loan via a lease purchase agreement.[29] The State wanted to preclude school districts from purchasing land on a speculative basis using State money, only to sell the State funded property at a profit at a later date. This meant that the state would control the disposition of any school facility that it financed until the school district repaid its obligation on the lease.

The Proposition 13 Epoch 1978-1986

Proposition 13—Local Governments and School Districts Fiscally Stymied

With its passage, Proposition 13 eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means for lease payments. Proposition 13 also prohibited the electorate of a school district from authorizing a tax over-ride to pay debt service on bonds for the purpose of constructing needed school facilities.

To exacerbate this problem, the voters soundly defeated school construction bonds in both 1976 and 1978. They were two of only three[30] state general obligation bonds rejected by voters since 1947. The non-passage of these two successive bond initiatives, coupled with suburban enrollment growth, caused a statewide shortfall of $550 million[31] that was needed for school construction projects throughout the state in 1978.

Post Proposition 13

The limitations set by Proposition 13 caused school districts, counties and cities to turn to the state, which had a $3.8 billion surplus, to fill the gap.[32] In 1979, lawmakers approved a $2.7 billion (in 1978 dollars) "bailout" plan to assist schools and local governments.[33] Within a year, the state surplus was reduced to roughly $1 billion. Furthermore, the state had taken on a larger role as a funding source for school operations and capital improvement. To that end, it expected school districts to conform to its programs and projects.[34]

Effects of Proposition 13 on the Lease Purchase Program

In 1979, legislation implementing Proposition 13 included provisions for restructuring the State's Lease Purchase Program.[35] School districts that received funds from the state were required to pay rent to the State as low as $1 per year, creating an "unofficial" grant program.[36] In addition, school districts were to contribute up to 10% of the project's cost from local funds.[37] However, many school districts could not raise these matching funds through local bonds. They requested that the State fund their entire projects. The State Allocation Board created a waiting list of projects.

A Recession Further Complicates School Facility Financing

Beginning in 1982, California was in a recession that lasted until 1984. During this time period, the State's budget surplus was expended. School districts' recession experiences were complicated by the fact that student enrollments again began to increase again.[38] Approximately 60 percent of California's 1,034 districts at the time projected annual growth rates of over two percent between 1980-81 and 1983-84, with some districts projecting a doubling in their enrollment.[39] At the same time, estimates indicated that over one-third of the State's school buildings were over 30 years old and many needed substantial rehabilitation.[40] The Coalition for Adequate School Housing (CASH) estimated that the one-time cost of rehabilitating these older facilities would be $1.9 billion.[41] Further, CASH estimated that school districts would need an additional $400 million annually for the next five years for building and repairing school buildings. Since the State was in recession, such funds were not available. Thus the State had to rethink how it would prioritize its school facilities projects.

A New System for Funding School Construction

In light of the backlog of applications for state funds, the Office of Local Assistance (now known as the Office of Public School Construction) designed a numerical ranking system that used "priority points" to determine a school district's eligibility for funds. This system gave priority to school districts who had students who were "unhoused," and special consideration was given to how districts used certain facilities.[42] The more points a project application received, the higher on the list it was placed. Recognizing that school districts were facing enrollment growth and required further rehabilitation, the Legislature in 1982 authorized a general fund appropriation of $200 million for school construction projects. This amount was later reduced to $100 million.[43]

Further, in order to ease the burden that many school districts felt because of the recession, the State loosened the repayment schedule for its lease-purchase program. School districts were allowed, for 10 years, to pay one percent of the cost of state funded lease-purchase projects, rather than the 10 percent they initially were required to pay.[44] Again, the State Legislature and the State Allocation Board moved away from a loan program and more toward a grant program.

Multi-Track Year-Round Education

Recognizing that the State had very limited bond resources, the Legislature wanted a more cost-effective facilities financing incentive system for school districts. That system would force districts to use their space more efficiently. In response to the shift in policy, the Legislature passed Chapter 498, Statute of 1983. This statute encouraged school districts that were experiencing growth pressure to adopt multi-track year-round education (MTYRE) programs. MTYRE programs enroll students in several tracks throughout the entire calendar year. At any given time, one track is on vacation, but vacation periods are short in duration.[45] The MTYRE program allows a more intensive use of existing facilities, thereby reducing the need for new facilities in growing districts.

School districts received an immediate financial return if they participated in the MTYRE program. A school district that redirected its students into a MTYRE program received a grant of up to 10 percent[46] of the cost that would be necessary to build a new facility not to exceed $125 per student.[47] School districts that participated in MTYRE were eligible for air conditioning and insulation in their buildings.

In 1988, as pressure for state financing continued, the Legislature required that top priority for financing new construction projects be given to districts that used multi-track year-round education programs. School districts that offered MTYRE and were willing to match 50 percent of their construction costs received a funding priority from the State Allocation Board.[48] This put other school districts that could not meet these MTYRE and funding criteria at a distinct disadvantage. These latter school districts sought relief from the voters in 1986. Small school districts were one exception to the MTYRE requirement.

1986 Lease Purchase Program

In 1986, the voters approved Proposition 46. Proposition 46 amended Proposition 13[49] by restoring to local governments, including school districts, the ability to issue general obligation bonds and to levy a property tax increase to pay the debt service subject to a two-thirds vote of the local electorate.[50] This amendment allowed school districts to augment the one-percent cap on property taxes and to secure additional bond indebtedness to build and improve their schools.[51]

Passage of Proposition 46 helped, but did not solve school districts' financing problems. Many school districts were unable to secure the necessary two-thirds vote to authorize local funding, and still relied on state funding to assist them. Further, the federal government in 1986 passed legislation that required each state to remove friable asbestos from their educational facilities – another charge that the school districts could ill afford.

California adopted similar asbestos standards to those established by the federal government in 1986; however, few school districts reported their estimated costs for removing the substance. In light of the need to remove the asbestos, and in order to address the growing backlog of proposed school construction projects, voters passed Proposition 79 in 1988 - an $800 million bond initiative. It specifically set aside $100 million to cover asbestos removal.[52]

A Growing Shortfall and Greater Scrutiny

There is no doubt that from 1982 to 1988 state support for public school construction was limited and difficult to secure. The demand for new school facilities, for modernization, and for asbestos removal was great.[53] As of June 1, 1986, applications that were submitted by school districts to the State Allocation Board for state funding of *new school construction* projects alone totaled roughly $1.3 billion. In addition, applications for state funding for *reconstruction or rehabilitation* of school facilities totaled over $991 million.[54] Total demand for school facility improvement in 1986 was nearly $2.3 billion - an amount that significantly outweighed the $800 million voters approved in that year's bond initiative.[55] Even with a boost of funding of $150 million per year from Tidelands revenues in fiscal years 1984 and 1985, the Lease Purchase Program fell short.[56] By 1988, the shortfall had grown to $4 billion, in spite of the fact that voters had approved $2.5 billion in bond money from 1982-1988.

The State Allocation Board was forced to scrutinize every request for school construction funding, recognizing that absent a major infusion of State bond money, most districts would not receive funding for their projects. This scrutiny created an extremely competitive environment for the limited resources that were available to the schools. Many participants believe that school districts that contracted with knowledgeable consultants, or had district staff who were familiar with the State Allocation Board's policies and criteria, were the most successful in securing a high ranking place in the queue for resources, once those funds become available.

There is no definitive research or data that support this belief. Consultants are not required to report their involvement in the application process. However, there is substantial anecdotal evidence to support the assertion.

School Financing as a Collective Effort—The Three Legged Stool

In 1986, the Legislature recognized that resources were scarce and that no one governmental or private entity could finance school construction. It attempted to equalize the burden of school facilities financing between state government, local government and the private sector.[57] This concept was known as the "three legged stool." The idea was that the state would provide funds through bonds. Local government would provide its share through special taxes, general obligation, Mello-Roos and other bond proceeds. The private sector would provide funds through developer fees. Appendix A describes funding alternatives for these latter two legs of the stool.

The "three legged stool," however, never quite worked. For example, to assure that developers would not fund a disproportionate share of the cost to build schools, the Legislature, in 1986, capped the amount new homebuyers would pay for developer fees at $1.50 per square foot, and empowered the State Allocation Board to raise the cap by a certain amount each year. However, school districts found a loophole around the cap by requesting that cities impose a fee on their behalf, and cities imposed rates on some

developers that exceeded those allowed.[58] California courts upheld these fees in the Mira, Hart, Murrieta court cases.

Until the recent passage of Proposition 1A, many local governments have imposed developer fees that exceed those allowed by the Board. For example, in 1987, fees in San Diego and Orange counties reached a high of $8700 per house.[59] By 1990, total development fees for some homes reached $30,000.[60] Statewide, developer fees have increased from $31 million in 1978 to $200 million in 1997.

In 1998, the State Allocation Board increased the fee to $1.93 per square foot.[61] With the passage of Proposition 1A in November 1998, however, local governments have apparently lost their ability to increase their fees beyond those determined by the State Allocation Board. Further conflict is likely.

The 1990s—Complicated Funding Programs

In the fall of 1990, the Legislature passed legislation that created two programs that provided additional financial incentives for schools to offer year-round education.[62] The first of these programs provided a one-time grant to school districts to ease the expense of changing from traditional nine-month programs to year-round tracks. The second program provided an "operating grant" of between 50 percent and 90 percent of the amount districts saved the state by not having to build new schools. At the recommendation of the Office of the Legislative Analyst, the Legislature repealed the 1982 and 1986 incentive programs discussed above.[63]

In response to the 1990 legislation, the State Allocation Board developed a new priority system for allocating lease purchase money. Under this new system, the Board apportioned funds based on a combination of when an application was received and how many priority points it garnered. Through a complex formula, priority points were given to schools that had a significant number of "unhoused students," or had substantial rehabilitation needs. This procedure might have worked well if the state could have financed all applications in a timely manner. However, the demand for state money increased to the point where districts without special priorities could expect to wait years for the state to finance their projects.

The program was in effect for only one year when the Legislature repealed the program and created yet another system for allocating state money.[64] In 1991, the Legislature defined six priorities for funding. First priority was given to districts that had a "substantial"[65] enrollment in multi-track schedules, and that were paying at least 50 percent of the construction costs for their new schools. Second priority went to districts with a "substantial" year-round enrollment and that wanted the state to pay the entire cost of any new construction for their year-round schools. The remaining four priority levels took into consideration factors for those schools who did not meet the "substantial enrollment" criteria outlined above, or were unable to match state resources.

The complex set of formulas made it difficult for school districts to completely understand what criteria would best serve them. Further, throughout this period, the Board was

required to implement new programs and redefine its priorities. For example, in 1990 the Legislature created a program that was adopted by State Allocation Board for school districts that could not find adequate land on which to build a school. Known as the Space Saver Program, it was designed to assist urban school districts that could not obtain adequate acreage for a school campus. The first space saver school, developed in 1993, is scheduled to be completed in Spring 2000 in the Santa Ana Unified School District, in a former shopping mall.[66]

Another example of shifting priorities took place in 1996 when the Legislature mandated the Board to redirect its third highest priority to class size reduction from a previous focus on child-care facilities.[67] A third took place at the end of 1997 when the priority points system was replaced by a first-come, first served system. While there were exceptions to this rule, money was offered first to school districts willing to cover some of the costs associated with constructing or repairing facilities. Schools that could not afford to cover the remaining 50 percent were placed on a separate list.

Such shifts in policy, coupled with the significant complexity of formulas that drove the priority point system, along with the sporadic creation of new programs, caused many school districts to depend on outside consultants. These consultants understood the many policy changes that the Board enacted – sometimes on a monthly basis. They were also knowledgeable of new programs, and clearly understood the workings of the staff who carried forth the Board's policies. Without the assistance of consultants, school districts were unable to keep track of policy changes and special considerations enacted by the Board. Further, while the Board and its staff advised school districts regarding changes in their policies in a regularly published document, it did not provide a centralized source of materials, such as an up-to-date handbook. Consequently, school district personnel were often uninformed about the various nuances of the programs administered by the Board.

State Bond Efforts of the Nineties

As the State Allocation Board shifted its focus and policies throughout the early 1990s, Californians approved state school bond initiatives in 1990 for $1.6 billion and in 1992 for $2.8 billion. In one of its 1992 reports, the Department of Finance reported that statewide K-12 enrollment was estimated to grow by 200,000 new students per year for at least five years,[68] and that an estimated $3 billion would be needed annually for new school construction.[69] However, in spite of growing enrollments and a significant demand for facility rehabilitation, in 1994, the electorate rejected a $1 billion bond initiative. The State was in a recession.

A lack of State bond funds was not the only problem associated with the allocation of school construction funds. The Auditor General reported in 1991 that the Office of Local Assistance mismanaged state funds. It detailed that construction funds loaned to school districts were not recovered; that districts overpaid on some projects and failed to collect the overage; that it dispersed funds without proper documentation; and that it failed to conduct required close-out audits on construction projects.[70]

As a result of this audit, the Office of Public School Construction in concert with the State Allocation Board developed stringent internal and external audits and fiscal controls. These control mechanisms included increasing the detail of financial review of projects, prohibiting school districts from participating in the program unless a balance was not due, and no longer receiving rent checks for portable classrooms.[71]

Attempts to Ease Passage for Local Bonds

Recognizing that the State would be unable to fund the entire backlog of school construction proposals, Governor Pete Wilson in 1992 proposed a constitutional amendment to reduce the requirement for the passage of local bonds from two-thirds to a simple majority.[72] The idea was that local governments should have to meet the same 50 percent requirement as the State for passing bonds. Further, there was strong sentiment in the Wilson administration that local governments should pay an increased share of school construction costs. However, the Legislature rejected his plan.[73] Other attempts in recent years to reduce the vote for passage of local bonds from two-thirds to something less have also failed.[74]

1996 School Bond Issuance - Finally More Money

Proposition 203, passed by the voters in March 1996, provided $2.065 billion for school facility construction. However, the Legislature at the time estimated that school districts would need $7 billion in construction funds to meet enrollment growth that was anticipated during the next five years.[75] This $7 billion did not include the needs of Los Angeles Unified School District (LAUSD), which had 20 percent of the state's student population. At the time, LAUSD alone needed $3 billion to upgrade and modernize its schools.[76] Clearly, anticipated demand for State funds substantially exceeded available resources.

To respond to the many school district proposals, the State Allocation Board followed its general priority points policy. However, many school districts, recognizing that they would not receive funding for years because of their position in the funding queue, and because of the limited amount of resources that were available, resorted to creative means to try to secure funding for their projects. For example, some schools districts sought special consideration for funds by requesting emergency allocations. Such a tactic would allow a school district to receive funds immediately.[77] Other school districts used the appeals process to argue that their projects were needed more than those of other school districts that were higher in the queue.[78]

This cannibalistic dynamic caused a fair amount of resentment among those school districts that were bumped from a relatively high position in the queue by those districts that sought emergency relief or special consideration. Further, it was clear that the most sophisticated school districts found a variety of tactics that would secure the funding of their projects. These tactics are described in greater detail later in this paper under the section that describes how the Board processed its applications.

Class Size Reduction Causes Greater Housing Needs

The distribution of funds from Proposition 203 was further complicated by the Governor's Class Size Reduction Initiative. In particular, the State Allocation Board earmarked $95 million for the purpose of purchasing 2,500 portable classrooms for schools that were facing severe classroom shortages. This was in addition to $200 million that the Department of Education had available for assisting schools in purchasing such facilities. The Office of Public School Construction determined that a total of 17,500 classrooms were needed to accommodate class size reduction, and that there was only enough money to fund less than half of the estimated need.[79] The State Allocation Board reinterpreted Proposition 203 by creating a new Portables Purchase Program at the expense of their other programs. This caused some school districts to again get bumped in the queue for funding.

Never Enough Money—Still a Shortfall

Since1947, the electorate has approved all but three State bond initiatives. In spite of the voters' tendency to support various bond initiatives, by 1998, the backlog of school construction projects that were approved by the State Allocation Board, but unfunded, totaled more than $1.3 billion. Although the voters have been generous by approving bond initiatives roughly every two years,[80] there were times during the past five decades when bond money was not available for periods of four or six years.[81]

The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.[82] Various bond proposals in 1997 and 1998 were circulated that considered multiple-year bond issuances. The California Teachers Association and the California Building Industry Association presented a plan to issue $2 billion a year for 10 years.[83] Governor Wilson proposed $2 billion a year for four consecutive years. In the end, Proposition 1A was passed. It provides $6.7 billion over a four-year period. However, while the amount appears generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money.

Table 1 on page 18 shows the history of state school bond initiatives from 1949 to 1998. In the next sections of this report, we discuss the various programs, the complicated application process used by the State Allocation Board that school districts had to endure to secure funding, and how Proposition 1A attempts to simplify this process.

Table 1 - STATE SCHOOL CONSTRUCTION BONDS		
Title of Bond Initiative	Date & Year of Election	Funds Authorized
School Building Aid Law of 1949	November 8, 1949	$250,000,000
School Building Aid Law of 1952	November 4, 1952	$185,000,000
School Building Aid Law of 1952	November 2, 1954	$100,000,000
School Building Aid Law of 1952	November 4, 1958	$220,000,000
School Building Aid Law of 1952	June 7, 1960	$300,000,000
School Building Aid Law of 1952	June 5, 1962	$200,000,000
School Building Aid Law of 1952	November 3, 1964	$260,000,000
School Building Aid Law of 1952	June 7, 1966	A)$275,000,000
School Building Aid Law of 1952	June 6, 1972	B)$350,000,000
School Building Aid Law of 1952 And Earthquake	November 5, 1974	$150,000,000
School Building Lease-Purchase Bond Law of 1976 (Failed)	June 8, 1976	$200,000,000
School Building Aid Law of 1978 (Failed)	June 6, 1978	$350,000,000
School Building Lease-Purchase Bond Law of 1982	November 2, 1982	$500,000,000
School Building Lease-Purchase Bond Law of 1984	November 6, 1984	$450,000,000
Green-Hughes School Building Lease-Purchase	November 4, 1986	$800,000,000
School Facilities Bond Act of 1988	June 7, 1988	$800,000,000
1988 School Facilities Bond Act	November 8, 1988	$800,000,000
1990 School Facilities Bond Act	June 5, 1990	$800,000,000
School Facilities Bond Act of 1990	November 6, 1990	$800,000,000
School Facilities Bond Act of 1992	June 2, 1992	$1,900,000,000
1992 School Facilities Bond Act	November 3, 1992	$900,000,000
Safe Schools Act of 1994 (Failed)	June 7, 1994	$1,000,000,000
Public Education Facilities Bond Act of 1996, Proposition 203	March 1996	C)$3,000,000,000
Class-size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998, Proposition 1A	November 3, 1998	D)$9,200,000,000

Bonds in [bold] failed to receive a majority of votes.

A) New amount of 1966 bond authorization available for regular program is $185.5 million after deducting $35 million reserved for compensatory education facilities, $9.5 million for regional occupational centers, and $35 million for rehabilitation and replacement of earthquake damaged and unsafe schools.

B) Up to 250 million dollars earmarked for rehabilitation and replacement of unsafe schools.

C) One billion dollars earmarked for higher education facilities

D) Two and one-half billion dollars is allocated for higher education.

THE PROGRAMS

Prior to the approval of Proposition 1A, the State Allocation Board oversaw six active programs associated with school facility construction, repair, and remodeling. These six programs made up the Lease-Purchase Program that was discussed earlier in this paper. This section briefly describes these programs, discusses how the State Allocation Board set priorities for school district projects, explains how the Office of Public School Construction staff reviewed and acted upon district proposals, and how the State Allocation Board considered district appeals. The purpose is to advise the reader of not only the process and administration of allocation, but also some of the pitfalls that existed under the old system. Perhaps these pitfalls of the old system can be avoided when allocating Proposition 1A resources.

The Growth and Modernization Programs

The Growth and Modernization Programs allocated funds to school districts for building new schools (Growth Program) and for repairing existing facilities (Modernization Program). School districts qualified for the Growth Program based on an "allowable building standards" formula.

For its Growth Program, the State Allocation Board developed standards for the amount of space that was necessary to house students based on a district's number of ADA (Average Daily Attendance).[84] The Modernization Program provided funds to school districts for nonstructural improvements to permanent school facilities that were more than 30 years old, and for portable buildings that were more than 20 years old. Such nonstructural improvements included interior partitions, air conditioning, plumbing, lighting and electrical systems.

The Modernization Program provided funding for up to 25 percent of the replacement value of the building. Under some circumstances, districts could use additional funds beyond the 25 percent for handicap access compliance, including elevators when appropriate, and for alternate energy systems.

School districts could apply to this program by offering to match state funds and be listed as "Priority One," or they could ask the State to fund their entire project and be listed as "Priority Two."

Process for Receiving Growth and Modernization Funds

School districts that applied for growth and/or modernization funds were required to follow nine steps in three critical areas - planning, site selection and construction. Each of these three critical areas provided a separate and gradual funding stream for the school's project.

Planning Phase

During the planning phase, a district was required to complete four forms that demonstrated that it was eligible for either the growth or modernization program.

Eligibility to participate in the programs was based on enrollment patterns or the age and condition of those schools that required modernization. If a district met these standards, it moved on to the "site development phase."

Site Development Phase

Selecting a school site was critical. If a school district was participating in the modernization program, it would move to the next phase. The site would have to be safe and able to support the school's curriculum. An adequate site would have to meet certain standards with respect to size and location. Site review could take a school district months (if not years) to investigate. Under the growth program, a school district arranged a search committee to locate available properties and narrowed its search to three sites. In addition, the school district held public hearings regarding the impact of the lands to be used for educational purposes, and notified neighbors about possible site use. A representative from the Department of Education visited three selected sites to review and determine which was the most suitable site based on criteria including, but not limited to: street traffic safety; traffic congestion; geological hazards; and other environmental issues. All school districts followed a similar process for site selection whether they financed the project themselves, or requested State funding.[85]

Some school districts were unable to build new schools because they could not secure appropriate properties. This was especially true in urban and industrial areas where vacant land was not readily available or was extremely expensive.[86]

Once a district found an appropriate property, it was required to prepare a site development plan that included architectural and engineering drawings, along with building contract agreements. Districts were required to follow strict site development, plan development, and construction cost guidelines in order to be eligible for state funds.[87] Once these guidelines were met, the district proceeded to the construction phase.

Construction Phase

Every construction project received an allowance for site development and to erect a building. The eligible costs associated with construction for these programs were classified into several broad categories: building construction; site development; energy conservation; and supplemental funding for multi-story construction. In addition, facility funding included adjustment costs associated with geographic and regional differences, or the demolition of an existing structure.

A project architect for each contract developed final plans and documents as part of the project's final stage. These documents were used to establish a construction budget. The Division of the State Architect approved and monitored the district's final plans. After review, a construction apportionment was recommended to the State Allocation Board, which in turn authorized the distribution of funds. Upon completion of all regulatory oversight, the district was allowed to break ground.

The Deferred Maintenance Program

The Deferred Maintenance Program provided a 50 percent State match to assist school districts with expenditures for major repair or replacement of school buildings. Such repairs or replacements were for plumbing, heating, air conditioning, electrical systems, roofing, interior and exterior painting, and floor systems. School districts were required to place one and one-half percent of their general funds into an escrow account in order to receive a State match. For school districts that could not fit the parameters of the modernization program, the deferred maintenance program was the only alternative to receive State assistance.

The State also provided critical hardship funds to repair buildings that might seriously affect the health and/or safety of pupils. When available funding was insufficient to fully fund all hardship requests in any given year, the State Allocation Board created a priority list. However, the State Allocation Board often made exceptions to its list.

The Deferred Maintenance Program differed from the modernization program in that school districts were required to submit a five-year plan as to how their projects would be implemented. The plan displayed a rank for each project, and identified those projects that the school district would likely fund.

Deferred Maintenance Application Process

Based on the most recent available material, the deferred maintenance program had 13 steps, and a school district needed to complete several forms and documents. The 13 steps were divided into categories including a letter of interest, application process, critical hardship project documentation, and fund release.

A school district notified the Office of Public School Construction each year if it wanted to participate. Upon receipt of the initial letter, the Office of Public School Construction would send the district a request for its five-year plan of maintenance needs and an "Annual Application for Funds."

The school district would then provide the OPSC with a list of items scheduled for major repair or replacement,[88] along with its five-year implementation plan. When the district received state funds, it could only expend those resources for those items on the list. It could not redirect any resources toward administrative overhead, repair and maintenance of furniture, ongoing preventative maintenance, energy conservation, landscaping and irrigation, athletic stadium equipment, drapery or blackout curtains, testing underground storage tanks for leaks, or chalkboards.

Once the Office of Public School Construction approved a school district's list of projects it allocated funds accordingly. In cases of hardship, OPSC would visit the school prior to allocating funds. The district's governing board controlled and was responsible for all deferred maintenance funds. These funds were placed in a special escrow account.

The Year-Round Air Conditioning/Insulation Program

The Year-Round Air Conditioning/Insulation Program (ACI) began in 1986, as an incentive program for schools to operate during the summer.[89] In order to participate in the program, a school district was required to have a plan for Multi-Track Year-Round Education, or have 10 percent of its students enrolled in a Multi-Track Year-Round Education program. The ACI program assisted school districts by providing resources for air conditioning and insulation.

Year-Round Schools Air Conditioning/Insulation Application Process

The application process for the ACI program differed slightly for those school districts that had a year-round program from those that were planning a year-round program. However, regardless of their status, school districts were required to complete eleven stages in two phases to receive funding. If a school district had an air conditioning system that needed repair, it could not apply to this program, but could apply for funds under the deferred maintenance program.

A school district completed forms that included information on the buildings and spaces that would be affected, along with a report regarding the project's anticipated start-date. In addition, another application was required that provided information on whether the school site was experiencing enrollment growth, and whether some level of modernization was already in progress. Further, a school district that was not on a year-round schedule was required to show how its year-round calendar would be used. If the district was approved for funding, various allowances were provided to the district.[90] In addition to these allowances, the state would provide funds for gas and electric service, general site development, and air conditioning/insulation construction.

Items that were not covered by this program included costs for heating, window solar film, classroom doors and hardware, re-roofing, lighting, security, interior housing, fire alarm systems, unrelated repairs, installations, and painting.

The State Relocatable Classroom Program

The Relocatable Classroom program was designed to meet the needs of school districts that were impacted by excessive growth or unforeseen classroom emergencies. The State Allocation Board allocated funds for the acquisition, installation, and relocation of safe portable classroom facilities. The State maintained a fleet of 5,000 furnished classrooms that could be leased to school districts for $4,000 per year. Hardship cases could lease portables for $2,000 per year. These portable units were available on a first-come, first-served basis. However, there was no maximum amount of time a school district could keep the portables, and districts were not required to return them. Thus, some school districts have kept the portables indefinitely.

Relocatable Classroom Application Process

In order to participate in either relocatable classroom program, a school district was responsible for site preparation costs including electrical hookup, plumbing connection, a State Architect approved plan, insurance and maintenance. After approval by the Board, the district would be reimbursed for the cost of architect fees, electrical hookup, furniture and equipment, and plumbing installation. However, reimbursements were capped at $9,450 per classroom.

The Unused Site Program

The Unused Site Program was established in 1974 as part of the General Lease–Purchase umbrella. It required school districts and county superintendents of schools to pay a fee for district properties that were not used for "official" school purposes. "Official" school purpose was defined as being used for K-12 education, continuing or adult education, special education, childcare, or administration of any educational units.

This program did not provide funds directly to schools. However, resources generated from the fees that districts paid for unused facilities were used to cover deferred maintenance costs and to service the debt on the state's various school construction bonds. Since the Board simply administered the return of funds to the state, the funds could not be redirected to other programs administered by the Board. Proposition 1A eliminates their fee requirements.

The Office of Public School Construction Staff Review and The State Allocation Board's Appeals Process

The State Allocation Board meets roughly 11 times a year. At each meeting the Board reviews and approves about 200 applications for funding. Prior to the State Allocation Board's review, the Office of Public School Construction staff processes all applications. Before Proposition 1A, the approval processes for the programs, except for the growth and modernization programs, were straightforward. Either a school district's application fit a program's description for reimbursement, or it did not. Due to the complicated nature of the Growth and Modernization programs, "special considerations," or project applications that did not fit in the parameters of the program were placed in a different category. The State Allocation Board approved roughly 90 percent of all growth and modernization projects without special consideration. Issues requiring special consideration could include peculiarities of the proposed site, or the costs associated with a project. The applications were divided into special consents or "specials," and appeals. Both types permitted the Office of Public School Construction staff great latitude in the decision-making process, as they investigated and evaluated school district applications on a case-by-case basis.

A "special" occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined that an exception should be made. This agreement may have required several meetings between the school district's administration and the OPSC staff. With OPSC staff recommendation, which may have

been inconsistent with State Allocation Board policy, this application would be brought before the State Allocation Board for review. This category was normally granted approval in one action.

An appeal occurred when OPSC staff reviewed a school district's application that did not meet the standards of the program, and determined an exception should not be made. If after several meetings an agreement could not be reached, the school district would bring its case before the State Allocation Board. An appeal was granted only on a case-by-case basis. At times, legislators have spoken on behalf of school districts at Board meetings.[91] The difference in the two types of special considerations was that a school district or its representative would have to defend its actions in an appeal. However, as already noted, only those people who kept up with the process and policy changes were adept enough to tackle an appeal. Therefore, a school district seeking an appeal before the State Allocation Board might seek help from legislators that represented them, or hire consultants. For instance, in the May 1998 State Allocation Board meeting, a well-versed school finance consultant appeared on behalf of the Apple Valley Unified School District. Apple Valley hired both a construction manager and a general contractor to erect its new school, in the face of board policies allowing a school district to hire only one such position. On behalf of the school district, the consultant addressed the State Allocation Board, and pointed out that in five other cases the State Allocation Board had voted in favor of a school district that hired both a general contractor and a construction manager.[92]

Less seasoned district representatives would not have known that the State Allocation Board had already set a precedent for funding projects that include both a construction manager and a general contractor.[93] The OPSC staff was not knowledgeable on this issue and therefore could not be a source of information.

PROPOSITION 1A—A POSSIBLE FIX TO SAB PROCESS PROBLEMS

Proposition 1A not only authorizes an additional $6.7 billion to K-12 schools, but it also offers a fix to several of the process problems discussed above. It replaces the provisions of the previous Lease-Purchase Program. This section discusses (1) the resource allocation provisions of the legislation; (2) the programmatic components of the legislation; and (3) how the legislation improves the resource allocation process over that which existed under previous bond programs.

Total Resource Allocation Provisions of Proposition 1A

The resource allocation system in Proposition 1A is specific and detailed. Bond proceeds are to be allocated in 2 two-year cycles: $3.35 billion available immediately; and $3.35 billion available after July 2, 2000. Of the $3.35 billion that is immediately available, $1.35 billion is earmarked for new construction, $800 million for modernization, $500 million for hardship cases, and $700 million for class-size reduction.

For the second $3.35 billion distribution, $1.55 billion will be available for new construction, $1.3 billion for modernization, and $500 million for hardship cases. There are no resources in the second allocation for class-size reduction.

School districts receive funding for their projects based on a per pupil formula. The formula is based on a statewide average cost for construction, adjusted each January for inflation. The figures are based on unhoused [94]average daily attendance (ADA). The per pupil ADA formula is as follows:

	Growth	Modernization
Elementary	$5,200	$2,496
Middle School	$5,500	$2,640
High School	$7,200	$3,456

It is anticipated that the initial $1.35 billion available for new construction during the first round of allocations will be insufficient to meet the needs of those school districts that are facing substantial enrollment growth. Proposition 1A establishes a priority point system for new construction projects when State bond resources are exhausted.[95] The Office of Public School Construction will process applications on a first-come, first-served basis from subsequent bond offerings.

In addition to the provisions outlined above, school districts that receive bond proceeds are required to set aside three percent of their general funds each year for 20 years for the purpose of deferred maintenance.

Components of Proposition 1A

Proposition 1A establishes three categories for funding. The first is the Growth Program, in which the State finances half the cost of new construction and the school district the other half. The second is the Modernization Program, in which 80 percent of the cost of rehabilitation is provided by the state and 20 percent by the school district. The third category is "hardship," in which the State funds up to 100 percent of the cost for emergency needs, or an increased proportion of its share for new construction or modernization.[96]

Proposition 1A holds harmless those school districts that received State Allocation Board approval for the construction phase of their projects (under the previous Priority 1 - able to provide a 50 percent match). They will receive growth and modernization funds, but under the rubric of the previous "Lease Purchase Program." This grant is supplemented by land costs, site development, and other adjustments.

Another new provision of the Proposition is that school districts can seek modernization resources after a facility is 25 years old, rather than 30 years under the previous program.

Schools districts that had received prior Board approval for Priority 2 projects (100 percent state funding) will have to either indicate their ability to finance 50 percent of their proposed projects or reapply under one of the new programs. If the school district cannot meet the provisions of the new programs, it can apply as a "hardship" case.

The California Supreme Court ruled in 1991 that cities and counties could limit housing development on the basis of the supply of classrooms.[97] Proposition 1A suspends, until 2006, the Court's ruling.[98] With the passage of Proposition 1A, school districts will not be able to limit new housing construction based on a rationale that school facilities do not exist. However, in 2006, if adequate bond funds for new construction are not available, cities and counties can once again deny development. Further, as discussed earlier, the Proposition permits the school board to increase developer fees to up to $1.93 per square foot.[99] Proposition 1A sets up a system where fees can be levied of up to 50 percent and 100 percent of the costs associated with building a school by developers under certain circumstances.

Proposition 1A Improves the Resource Allocation System of the State Allocation Board

Proposition 1A makes several changes to the programs administered by the State Allocation Board. It attempts to simplify the process of applying for funds, consolidates the Board's previous six programs into two, and attempts to create a more equitable funding system. It also makes the State Allocation Board and the Office of Public School Construction staff more accountable for their actions. Table 2 presents the differences between the Board's previous Lease Purchase Program, and the new programs that are initiated by Proposition 1A.

Table 2 - Comparison of Lease Purchase Program to Proposition 1A Programs

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
FUNDING FACILITIES	Priority 1 projects-growth and modernization-received 50 percent funding based on actual costs from the state. Priority 2 projects-growth and modernization-received 100 percent funding form the state.	Growth projects receive 50 percent funding based on a per pupil formula from the state. Modernization projects receive 80% funding from the state. Hardship projects can receive up to 100 percent of funding from the state based on three broad categories financial, physical and excessive costs.
CONSTRUCTION EXCESSIVE COSTS & COST SAVINGS	Some excessive costs (i.e., change orders) were reimbursed by the state. Cost savings were returned to the state.	Excessive costs are not reimbursed by the state and school districts keep costs savings.
MODERNIZATION PROJECTS	Buildings must be at least 30 years old.	Buildings must be at least 25 years old.
PROJECT APPROVAL	Projects were approved three times in conjunction with the planning, site acquisition and construction phases.	Projects receive one approval (except hardships that receive two approvals).
FUND ALLOCATION	Funds were allotted after each phase.	Funds are allotted only after DSA approves plans, unless there is a hardship.
MAINTENANCE OF FACILITIES	Required school districts to set aside two percent of their general fund for ongoing maintenance.	Requires school districts to set aside three percent of their general funds for 20 years for ongoing maintenance.
PROPERTY LIENS	State maintains a lien to properties it funds.	State does not hold liens, and existing liens are released.
ARCHITECTURAL APPROVAL	Division of State Architect approved all plans.	The Division of State Architect or a state approved private engineering firm may approve plans.

	LEASE PURCHASE PROGRAM	SCHOOL FACILITIES PROGRAM PROP 1A
DEVELOPER FEES	The cap on fees was $1.93 per square foot; however, cities or counties could levy a higher fee and pass it to schools districts.	The cap on fees is $1.93 per square foot, adjusted biannually. Fees may be assessed up to 50 percent of the costs of a project if a school district has accessed other forms of financing including Mello-Roos, G. O. bonds, and parcel taxes. In order to increase fees, school districts must meet two of four criteria, including MTYRE, local school bond positive votes of 50 + 1 percent, 20 percent of students are housed in portables, 15 percent of bond debt used.
WHEN STATE FUNDS RUN DRY	Projects were placed on a pending state-funding list or charged a city-based developer fee.	Modernization projects may be placed on a pending state-funding list. Growth projects may be placed on a priority points list, or the school district may collect 100 percent of financing from a developer.
CONTAINING DEVELOPMENT (MIRA, HART MURRIETA COURT CASES)	Cities and counties on behalf of school districts were able to contain residential development by suspending the building of new facilities.	School districts can not request cities or counties to prohibit residential development based on a lack of funds or school facilities until 2006.
ARCHITECT & CONSTRUCTION MANAGEMENT FEES	Percentage caps on fees based on size of projects	No caps.
MODERNIZATION PROGRAM	Provides funding to building over 30 years old, and portables over 25 years old. Calculations done on a district basis.	Provides funding for buildings over 25 years old and portables over 20 years old. Provides funding on a site-specific basis.
AIRCONDITIONING-ASBESTOS PROGRAM	Allotted funds specifically to install AC and remove asbestos.	These are now incorporated in the modernization program.

Simplification

To further simplify the process, the Proposition reduced the number of school facility financing phases from three to one.[100] This is now possible because school districts receive a flat grant from the State based on the number of students they enroll, rather than on the estimated cost of a project. Under the previous program, each phase of a project was evaluated independently; thus the cost to the State for any given project could change. Under the new program, a school district receives a single grant for a single project, and cannot request that the state fund additional need beyond the original request.[101]

The Proposition also explicitly requires that the State Allocation Board initiate a public hearing process that notices any policy changes considered by the Board. It requires that the Board make available to school districts written up-to-date documentation that clearly explains its policies, and specifically describes how its new programs work.

Consolidation

Until Proposition 1A, the State Allocation Board administered as many as 13 programs. The most current six are discussed above. With the enactment of Proposition 1A, the number of programs has been reduced to two, along with a special category for hardship cases. This consolidation of programs makes it easier for school districts to choose a program that best suits their needs. It precludes the type of creative tactics that school districts were forced to pursue to match their projects to the right program in order for them to receive funding.

A More Open Process

The Proposition causes a major shift in policy direction for the State Allocation Board. Under its previous programs, the Board funded both new construction and modernization on a 50/50 matching basis. Under Proposition 1A, the Board is required to fund modernization projects more generously than new construction projects, in that the State will fund 80 percent of the cost for modernization compared to 50 percent for new construction.

Another major outcome of Proposition 1A is that the State Allocation Board no longer has the authority to offer grants to school districts that may seek funds for special projects without any real statutory framework. Now school districts must demonstrate that they meet specific hardship criteria set out in the new law. The practical effect of this change will depend on how the Board interprets this provision.

Previous legislation implicitly required that the State Allocation Board follow guidelines set forth in the Administrative Procedures Act (APA); however, the Board did not do so. Proposition 1A explicitly requires the Board to follow APA guidelines. This means that any change in policy or regulation considered by the Board must be properly noticed to the public before the Board can act. This requirement, if the Board follows the full spirit, will allow school districts to be fully informed of Board policies and procedures, as well as its rules and regulations.

PITFALLS IN THE PROCESS PRIOR TO PROPOSITION 1A

This section discusses the State Allocation Board's attempts to improve its system and the pitfalls that existed under the previous programs.

Until recently, rules governing the application process were labor-intensive, both for school districts and the state agency personnel (including the Office of Public School Construction and the Division of the State Architect). In 1989, the Legislature received a report outlining the complex application.[102] The report identified 54 steps school districts had to perform in order to receive application approval and eventual financing. In addition, the process required 24 separate forms.

Process Streamlined Recently

Since 1992, the OPSC has tried to be more efficient. Changes implemented by OPSC included: simplified and streamlined applications; improved response time for application review; improved policy information dissemination; and school districts were empowered to complete their own applications.

The most concrete indication that the Office of Public School Construction was becoming more efficient was in the application process. The application process for the Growth Program was reduced from 54 steps to nine. In addition, the number of forms that were needed to apply for funding was reduced from 24 to four.

School districts complained and begged for applications to be checked and approved for a State Allocation Board meeting agenda in an expeditious fashion. As part of the efficiency movement, the Office of Public School Construction set a goal to reduce the time from when a school district filed a completed application until it was placed on a State Allocation Board meeting agenda from over 400 days to 60 days.[103] Prior to Proposition 1A, applications on average still took longer than the 60 days to be reviewed. However, the office's efficiency achievement by reducing application review days is noteworthy.

In addition, the Office of Public School Construction worked more closely with school districts in the decision making process and provided greater leeway. In particular, school district personnel could self-certify certain information pertaining to a project rather than rely on state agency personnel. The self-certification process removed the time a school district would wait for a response from the Office of Public School Construction. It thereby shortened the application process.

Under its previous programs, it was difficult for school districts to get information pertaining to the funding process from the Office of Local Assistance (OLA) staff or from written materials. The Office of Public School Construction is now more service-oriented.[104] One can obtain information in person or from the office's Internet site.[105] In fact, the staff of the Office of Public School Construction is continually placing more information on the Internet. This information includes an automated project tracking system, Senate Bill 50 regulations, office contacts, and old board policy changes.

School Districts in Line Stand on Shifting Sands

Under the previous allocation system, school districts that completed their applications and were placed in queue were never guaranteed funding in the order their applications were received. The State Allocation Board dictated that school district applications were placed in an unfunded application list on a first-come/first-served basis. However, there were four general ways that school district applications could be "bumped" up or down in the queue.

Broad Classification Decisions

The first way a school district could get bumped was if the State Allocation Board decided to redirect its emphasis and fund a broad category of projects. For instance, the SAB could decide to fund all application projects from small school districts (no matter where they were in queue). If a school district was large, hundreds of proposed school projects could jump ahead in the funding queue.

The second way a school district could get bumped was if the State Allocation Board shifted the specific funding program allocations. Thus, for example, the State Allocation Board could decide to shift funds earmarked for the Growth Program to the State Portable Classroom Program.

Specific School District Decisions

The third way a school district could get bumped was if another school district application in queue with a later application filing date appealed to the State Allocation Board to change its application filing date to be ahead of other school districts. That school district application would be funded first.

The fourth way a school district could get bumped was if an emergency situation occurred and a school district requested critical hardship money from the State Allocation Board. The Board could provide these funds when available.

The application process requires equity and balance in order to ensure fair competition by school districts for State funds. The process needs to be flexible enough to handle emergency situations, yet firm enough to prohibit jockeying among school districts for better placement in the queue.

Proposition 1A halts the movement of funds from one program to another. However, the other examples are still feasible. Jockeying of school districts by consultants for better placement in line may continue to occur. This is especially true as Proposition 1A cannot handle the pent up demand for State funds. The next section discusses options that the Legislature may consider in order to improve this system.

OPTIONS FOR IMPROVING THE SCHOOL FACILITY FINANCING SYSTEM

A Separate List for Small and Rural School Districts

When the Proposition 1A funds are exhausted, new construction project applications will receive priority points for future funding. Small and rural school districts may require separate lists to ensure that they are placed near the front of a funding queue. This is necessary because there is no guarantee that the entire queue would receive future funding. Small and rural school districts, based on the current priority points system, may not receive enough priority points to approach the front of the queue. Larger school district applications, with greater per pupil need, may be able to position themselves high enough in the queue for funding by receiving favorable OPSC evaluations. Proposition 1A allows schools to skip to higher positions in the funding queue if they score higher priority points based on their number of unhoused students or if they can demonstrate a special hardship. *The Legislature may wish to create a separate list for small and rural school districts to create a more equitable system.*

Annual Report and Independent Accounting

In the early 1990s, many state agencies, boards, and commissions, because of budget cuts, postponed writing annual reports to the Legislature. These reports provided financial and policy information to the public. The State Allocation Board was one government entity that has not prepared regular audited reports of its programs' operations and expenditures for public review. The State Allocation Board will receive $6.7 billion over the next four years to fund school construction projects. *The Legislature may wish to require the Board to prepare for the Governor and Legislature an annual report that details how and to whom bond funds were distributed. The Legislature may wish to require that an independent accounting firm or the State Auditor General prepare the Board's report.*

On-Line Technical Assistance

Although the application and funding process administered by the Office of Public School Construction has been streamlined and simplified in recent years, certain components of the process are still cumbersome. The process should be simple enough that school districts do not need to hire consultants or lobbyists to advise them or to shepherd their proposals. *The Legislature may wish to pass legislation that would require the OPSC to develop a technical assistance program to provide school districts with the necessary information and advice they need in order to qualify for and receive bond funds. Such a system could include an automated Internet help-line.*

A Special General Fund Appropriation for School Construction

The State's bond capacity may not be able to fund every State infrastructure need, including schools, transportation, prisons, and water during the next decade. School facility needs are estimated conservatively at roughly $10 billion, while some estimates have put the figure at $40 billion for the next decade alone. According to the Department of Finance, the State can afford to service approximately $25 billion in additional debt. Thus, school facility financing alone could incur the entire debt capacity of the State. *The Legislature may wish to create a special appropriation fund for public school capital outlay as part of the State General Fund to augment the State's bond programs. In addition, the State may wish to design a school construction reserve fund, which is funded from budget surplus revenues.*

APPENDIX A

School District Financing Mechanisms

In addition to state bond funds, school districts have a variety of other alternatives for funding school construction. These include developer fees, certificate of participation, general obligation bonds, and Mello-Roos taxes. Also, a developer may simply build a school rather than consider other financing alternatives.

Local General Obligation Bonds

In 1986, after an eight-year hiatus, school districts could once again use general obligation bonds to finance school facilities. Bonds are a favorable method of financing, even though they require a two-thirds vote and proceeds cannot be used for items such as buses and furnishings. In 1986, 14 school districts offered bond initiatives. In 1987 and 1988, this number grew to 51 and 54 school districts, respectively. In November 1998, 36 school districts held bond elections.[106]

Developer Fees

In 1978, the Wilsona School District was the first to use developer fees. These fees added about $2,000 to the cost of a typical home in the Lancaster area. While school districts were exacting developer fees, there was no statute that explicitly permitted this activity. The Legislature standardized the authority by giving school districts direct authority to charge developer fees. School districts welcomed developer fees especially because they did not require an election, and the funds associated with the fees could be used for a wide variety of facilities that were associated with enrollment growth. In response to a growing number of complaints from developers, the Legislature capped the amount that could be collected in 1986. Proposition 1A prohibited local agencies from using the inadequacy of school facilities as a reason for not approving housing development projects. The authority to raise developer fees was placed with the State Allocation Board. However, developer fees generally are not enough to cover the full costs of constructing a school.

Certificates of Participation

Certificates of Participation (COPs) are another, though complicated, tool for districts to raise money without voter consent. The most common arrangement is that the district leases a new school owned by another government agency or a nonprofit agency, which in turn raises the capital to build the school by selling shares (certificates of participation). In the long run, lien revenues COPs are remarkably like bonds. One disadvantage of the COP arrangement is that it does not provide a new revenue source for the lease payments. Funds usually come from the school district's general fund.

Mello-Roos

The Mello-Roos Community Facilities Act, established in 1982, authorized school districts and local governments to form "community facilities districts." Subject to the approval of two-thirds of the voters, these special districts could sell bonds to raise revenues for the purpose of financing new buildings, or to rehabilitate existing school facilities. A majority of Mello-Roos districts are created in inhabitable areas that are proposed for development where voting is by the landowners. The district sets a specific tax per house.

ENDNOTES

[1] Chapter 243, Statutes of 1947.

[2] If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. There are school districts that repair and construct school buildings without the assistance of the State Allocation Board (i.e., San Diego Unified School District, San Luis Unified School District). However, this report will focus on a school district that requires state support.

[3] Chapter 243, Statutes of 1947. Initially, the State Allocation Board administered a number of Public Works programs for the State ranging from housing and employment assistance to school facilities construction. Various programs include: the Postwar Planning and Acquisition, Construction and Employment Act, Veterans Temporary Housing, State School Building Construction Programs, Emergency Relief Programs, and Community Assistance Programs (State Allocation Annual Report 1983-1984, p. 1).

[4] California Government Code 15502.

[5] Government Code 15490.

[6] While the State Allocation Board submitted policy changes to school districts, an up-to-date handbook was not made available. In addition, turnover of board members and school administrators may lead to ignorance of programs and the program changes.

[7] Amendments to the Constitution, Proposition 1, November 8, 1949.

[8] Amendments to the Constitution, Proposition 4, November 4, 1952.

[9] Op.cit.

[10] California School K-12 enrollment grew from 1.689 million students in 1950, to 4.633 million students in 1970 (State of California. Department of Education. Education Demographics Unit. CBEDS Data Collection. "Enrollment in California Public Schools 1950 through 1997").

[11] This is defined by California Education Code, Section 15102, as the legal limit of debt that a school district can incur based on the assessed value of property in that school district.

[12] Known as the State School Building Aid Program. The Legislature determined qualifications in order for school districts to participate in this program. They include the following provisions:

1. To qualify for a loan from the State a school district must have voted local bonds to 95 percent of its bonding ability.
2. Borrowing districts financially able to do so must repay the money to the State. Terms of 30 or 40 years of repayments are provided.
3. No money can be borrowed by a school district unless the proposed loan is approved by two-thirds vote of the electors of the district.
4. School construction, financed in any part by State loans will be subject to cost controls to be established by State Allocation Board (includes restrictions on the number of square feet of construction allowed per pupil).

[13] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[14] Voters set the initiative process in motion in 1911 under reform-minded Governor Hiram Johnson. Los Angeles Times. "State's Voters Face Longest List of Issues in 66 Years; November 8 Ballot to Carry Maze of 29 Propositions." July 7, 1988, p. 1-1.

[15] Amendments to the Constitution Propositions together with Arguments, Proposition 1, November 8, 1949. This bond issue was for $250 million.

[16] Amendments to the Constitution, Special Election, June 7, 1960, Proposition 2, Part II, Appendix. p. 2.

[17] School Building Safety Fund, December 1971.

[18] The Field Act, that mandates that school construction is able to withstand earthquakes, has yet to dictate how to build an indestructible building.

[19] Propositions and Proposed Laws, Together with Arguments, Primary Election Tuesday, June 6, 1972, p. 1.

[20] Ibid.

[21] State Allocation Board Report to the Legislature 1972-1973 Fiscal Year, p. 3.

[22] Public school K-12 enrollment declined from 4.457 million students in 1970 to 3.942 million students in 1980. (State of California. Department of Finance. Demographic Research Unit. 1997 Series California Public K-12 Graded Enrollment).

[23] Op.cit., p. 2.
[24] Ibid.
[25] Property rich communities often have more poor people than property poor communities. The presence of commercial and industrial development can make an otherwise poor district "rich" in its tax base. Conversely, affluent communities often discourage industrial development that would make them property rich, but environmentally poorer. The lack of correlation between poor people and property poor districts is often overlooked in discussions of school finance issues. Even though the distinction has been known for a long time. Campbell, Colin D.; Fischel, William A. National Tax Journal "Preferences for School Finance Systems; Voters Versus Judges." Footnotes from Helen Ladd. "Statewide Taxation of Commercial and Industrial Property for Education." National Tax Journal (June 1976): 143-153.
[26] Goff, Tom. "Passage of Tax Reform School Financing Bill Urged by Riles." Los Angeles Times, July 19, 1972, p. I-1.
[27] Section 17700 et al., Education Code.
[28] Property values were increasing dramatically all over the State. This model stopped school districts from speculating on land that was financed by the State.
[29] Op.cit., p. 2.
[30] Proposition 1 of 1978 was defeated 65 percent to 35 percent. Propositions from 1976, 1978 and 1994.
[31] Proposition 1 of 1976 would have provided $250 million, and Proposition 1 of 1978 would have provided $300 million.
[32] Shultz, Jim. "Major Firms Gained Most With Prop. 13." Sacramento Bee, September 13, 1997, p. F-1.
[33] Ibid.
[34] Karmin, Bennett. California's Bankrupt Schools." New York Times, July 17, 1983, pp. 4-21. Linsey, Robert. "San Jose Schools Declare Insolvency in Wake of Tax Revolt." The New York Times, June 30, 1983, p. A–14. However, some school districts that were academically and fiscally well managed prior to Proposition 13 faced problems. In 1983, the San Jose Unified School District filed for bankruptcy. The National School Boards Association stated that it was the first insolvency of a large school district since the depression. The San Jose Unified School District, at the time, held a reputation for excellence in education. It ranked 14th in the state in the ratio of students to teachers, and its teachers' salaries ranked second highest in Santa Clara County. However, since Proposition 13, the school district set aside maintenance and construction projects, laid off teachers and non-teaching administration, until it could not make further reductions and still continue to pay its staff.
[35] Chapter 282, Statutes of 1979. State School Building Lease Purchase Bond Law of 1984—Voter Pamphlet Analysis.
[36] While the loan program was still on the books, the state made exceptions to aid school districts.
[37] California Education Code, Sections 17730.2, 17732. However, the Attorney General cited that 10 percent of local funds to cover the costs associated with facility development is not required. Coalition for Adequate School Housing. CASH Register, November 1984, p. 3.
[38] California Department of Education. CBEDS Data Collection. Education Demographics Unit. 1998.
[39] Coalition for Adequate School Housing. CASH Register, September 1982, p. 1.
[40] Ibid.
[41] Coalition for Adequate School Housing. CASH Register, December 1982, p. 2., (in 1980-81 dollars).
[42] This evaluation was amended annually. The State developed a formula that was based on standards that considered how a facility was used and how many pupils were unhoused. In some years, the State gave preference to unhoused pupils, while in other years, the state gave first consideration to how a facility was used. Facility use included childcare, before and after school programs, adult education, and traditional K-12 programming.
[43] Savage, David. "Resolution Brings Tax Cuts, Schools Told." Los Angeles Times, October 15, 1982, p. B1.
[44] Assembly Bill 62, Chapter 820, Statutes of 1982.
[45] California Department of Education. California Year-Round Education Directory 1997-98.
[46] For example, a school district that needed to build a new elementary school that cost $4 million could receive $400,000 from the state if it chose to redirect students to existing facilities that incorporated the MTYRE program.

[47] Chapter 886, Statutes of 1986, added provisions that capped the grant at $125 per student.

[48] School districts that could not offer to cover any expenses (now referred to as a Priority 2) could conceivably wait years. MTYRE continues today, and has been a successful program. In 1997, more than 1.19 million or about 22 percent of California students attended schools with year-round calendars. The State Department of Education estimates that the MTYRE program has saved that State more than $1.8 billion in construction costs since its inception. In 1997-98, $66 million was allocated from the "mega item" of the state budget. About $40 million was sent to Los Angeles Unified School District to cover the reported 40,872 excess students. However, once students are "excess," they can not be counted as students for the Office of Public School Construction in the erection of new facilities. Approximately 102,000 students are "excess." While the program has provided relief for school construction, it remains a controversy whether educationally the program is successful.

[49] Proposition 46 on the June 1986 Ballot.

[50] Greene-Hughes School Building Lease-Purchase Bond Law of 1986 Voter Pamphlet.

[51] Proposition 46: Property Taxation, June 3, 1986.

[52] DeWolfe, Evelyn. "Schools Get Low Marks for Asbestos." Los Angeles Times, January 8, 1989.

[53] School enrollment bottomed to 4.089 million students in 1983, the same population amount that occurred in 1964. By 1986, student population increased to 4.377 million. California Department of Education. Education Demographics Unit. CBEDS. 1998.

[54] Op.cit.

[55] Op.cit.

[56] State Allocation Board Report to the Legislature 1984-85, 1985-86, Fiscal Years.

[57] AB 2926, Statutes of 1986.

[58] These were referred to as the Mira, Hart, Murrieta court cases.

[59] Later that year, fees were capped by the Legislature at $1.50 per square foot on residential units statewide.

[60] Fulton, William, "California Pulls Out the Stops; Cities Cope with Government Budget Deficit." American Planning Association, p. 24, October 1992. About one-third going to school districts.

[61] Cummings, Judith. "CA Turns to Developer Fees." The New York Times, January 16, 1987, p. A-15.

[62] Chapter 1261, Statutes of 1990.

[63] Legislative Analyst's Office, p. 23. "Building Schools in California: What Role Should the State Take in Local Capital Development?" Linda Herbert. Jesse Marvin Unruh Assembly Fellowship Journal, Volume II, 1991, pp. 1-4.

[64] Op.cit.

[65] Substantial enrollments are defined as at least 30 percent of the district's enrollment in kindergarten or any of the grades one to six, inclusive, or 40 percent of the students in the high school attendance area, see Education Code, Section 17717.7g.

[66] Conversation with Mike Vail, on January 21, 1999. Mr. Vail is the Assistant Superintendent of Facilities and Governmental Relations at the Santa Ana Unified School District.

[67] The class size reduction program reduced the ratio of students to teachers in kindergarten to third grades. It exacerbated the obstacles for school districts that were growing in size, but lacked facilities to house the new students. School districts that were not growing had to provide additional classroom space to account for smaller ratios of teachers to students in kindergarten to third grades. The State Allocation Board provided portable classrooms to cover the smaller-sized classes. The State Allocation Board estimates that thousands more classrooms are needed.

[68] Department of Finance, School Populations Projections. 1998.

[69] Jacobs, Paul. "Backers of Education Cite Jobs, Overcrowding." Los Angeles Times, May 27, 1992.

[70] Auditor General of California. "Some School Construction Funds are Improperly Used and not Maximized." January 1991.

[71] County of Sacramento Superior/Municipal Court, Court #97F05608, CJIS XREF #250593.

[72] Vrana, Deborah. "Assembly Rejects Plan in California to Ease Passage of School Bonds." The Bond Buyer, January 27, 1992.

[73] The passage required a two-thirds vote by the legislature.

[74] November 1993, Proposition 170 failed by 70 percent.

[75] Colvin, Richard Lee. "Bond Victory Heartening to Educators." Los Angeles Times, March 28, 1996, p. A1. Anderluh, Deborah, Sacramento Bee, March 31, 1996, p. A1. Of the $7 billion, $1.6 billion was estimated for overhauls of buildings over 30 years old, and $5.6 billion for new construction and classroom additions.

[76] Colvin, Richard Lee. "The California Vote (a Series)." Los Angeles Times, March 19, 1996, p. A3.

[77] If a school district has an application with the SAB to repair its roof and the roof is not fixed in a reasonable period of time, further structural damage may occur. This new or additional damage could bump the project to the top of the list.

[78] See the sub-section entitled "School Districts in Line Stand on Shifting Sands."

[79] Bazar, Emily and Jane Ferris. "Money for Portable Classrooms." Sacramento Bee, September 26, 1996.

[80] State bonds were proposed biannually in 1988, 1990, and 1992.

[81] In 1976 and 1978 bond measures were defeated by the electorate.

[82] "Lawmakers Scrap Over Billions in School Bonds." California Public Finance, May 5, 1997, p. 1.

[83] "Huge School Bond Mulled" California Public Finance, September 8, 1997, p. 1.

[84] This included the type of facility and the number of teaching stations (classrooms).

[85] The Department of Education, School Facilities Planning Division is responsible for site review and site plan review and is required to recommend all school locations for new schools and additions to schools site regardless of the funding source.

[86] For example, in 1988, the Los Angeles Unified School District wanted to rehabilitate a hotel into a school. The State Allocation Board paid $48 million to an escrow account in an attempt to hold the price to acquire the Ambassador Hotel. When the school district and State Allocation Board realized that the site was not acceptable and decided to back out of the contract, they found that the developer had removed the money placed in the escrow account. In addition, when the district attempted to backpedal out of the contract, the owner sued for a breach of contract. Currently, there are negotiations between the school district and the owner of the property, Donald Trump.

[87] A school district was responsible for developing detailed cost estimates for the proposed school or addition. Site support costs provided funds for the preparation of environmental impact documents, development of relocation reports, determination of relocation claims, and negotiation of site purchases. The state reimburses up to 85 percent of the amount expended for eligible sites.

[88] This list was limited to those school facility components that have approached or exceeded their normal life expectancy.

[89] Applications for projects and appeals with correspondence from Carol A. Fisher, Apple Valley Unified School District, Author.

[90] Reimbursable fees and costs related to plans include architect fees, Division of State Architect/ORS Plan Check fee, CDE Plan Check Fee, Preliminary Tests (like soil, foundation, and exploratory borings) and other fees, for instance, advertising construction bids, and printing of plans.

[91] Pascual, Psyche. "Funding to Build High School Finally Approved By State." Los Angeles Times, June 17, 1993.

[92] Understanding the board's other five opinions would be difficult to track if not impossible to uncover.

[93] To evaluate the State Allocation Board's policies and procedures, it was necessary to obtain the State Allocation Board Handbook. The Handbook contains procedures and policies for reviewing and criteria for approving applications from school districts for bond funds to build new schools. When this report was initiated, the Handbook that the State Allocation Board provided was dated 1995, but contained policies adopted in 1993. Further, the State Allocation Board changes its policies and procedures often, and has no administrative process by which it updates its Handbook. An up-to-date, comprehensive list of policies and procedures was not available in any other format. A new handbook for the Lease Purchase Program was available on line - however, it also suffered from a lack of regular updating. The State Allocation Board meets every month and, hypothetically, policy changes can occur each month. Prior to Proposition 1A, despite being subject to the Administrative Procedures Act, the State Allocation Board had no public notice or participation requirements for the procedures by which it changes its policies. Only long-term policies are published in the California Regulatory Notice Register. Such policies included contracting and affirmative action requirements. Furthermore, staff reported that policies change so frequently, that it would be impossible to include relevant policies in the reporter or any other document.

[94] The number of students above the maximum number set by CDE to be in a classroom.

[95] The priority points ranking mechanism is based on, among other things, the percentage of currently and projected unhoused students relative to the total population of the applicant district or attendance area.

[96] In hardship cases, the State will fund more than 50 percent of new construction if a school district is unable to come up with its 50 percent match and had gone through a reasonable effort. Similarly, districts that are unable to offer a 20 percent match for modernization can seek relief from the State. Financial hardship is defined for those school districts that cannot afford to build, repair, or replace facilities because of fiscal restrictions (for example, an inability to match state funding because of an inability to pass local bonds or a lack of bonding capacity). Facility hardship can also apply to school districts that lack adequate housing for their pupils due to a lack of health and public safety conditions; or because of a natural disaster, traffic safety, or the remote geographic location of pupils (i.e., rural). Excessive costs may be attributed to geographic location, size of project, the cost associated with a new project in urban locations that may require high security or toxic cleanup, and sites that may require seismic retrofitting.

[97] The State Supreme Court ruled that school districts that were unable to accommodate enrollment growth could ask their city and county councils to limit real estate developers from building additional housing. Some developers found it necessary to offer additional resources (land or money) to get support from school districts and city councils for their projects.

[98] In three legal challenges, the courts have ruled that cities were not precluded from making zoning or other land-use decisions, because of the availability of classroom space, see Mira Development Corporation v. City of San Diego, William S. Hart Union High School District v. Regional Planning Commission of the County of Los Angeles, Murietta Valley Unified School District v. County of Riverside. The practical effect of the rulings was that cities could limit development on the basis of the supply of classrooms. Some developers found it necessary to offer additional resources, land or money, to get support from school districts and city councils for their projects.

[99] If the State expends all of its Proposition 1A resources prior to 2006, school districts can ask developers to pay 100 percent of site acquisition and school construction costs. In order to receive developer support under these conditions, school districts must participate in the Multi-Track Year-Round Education program. The Proposition includes language that the State may reimburse developers for up to 50 percent of their costs if subsequent bond funds become available.

[100] Under the old program, school districts had three application phases for each of their projects – planning, site, and construction. Under the new program, there is only one application phase for the entire project proposal, except under hardship provisions.

[101] However, once the funds are distributed to the school district, the school district keeps the interest accrued on the funds.

[102] Price Waterhouse. Joint Legislative Budget Committee Office of the Legislative Analyst. Final Report of the Study of the School Facilities Application Process. January 10, 1988.

[103] One streamlined step is the self-certification process in the Lease Purchase Program.

[104] However, in light of the office's accomplishments, the author had to request information routinely more than once.

[105] www.dgs.ca.gov/opsc.

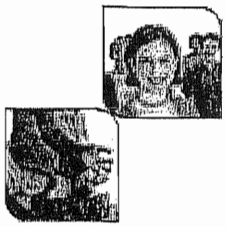
[106] School Services of California.

EXHIBIT C

PROPOSITION 55 BALLOT MATERIALS

Official Voter Information Guide

California
PRIMARY ELECTION



Propositions

Ballot Measure Summary

Proposition 55
- Analysis
- Arguments and Rebuttals
- Text of Proposed Law

Proposition 56

Proposition 57

Proposition 58

Bond Overview

OFFICIAL TITLE AND SUMMARY
Prepared by the Attorney General

Proposition 55

KINDERGARTEN-UNIVERSITY PUBLIC EDUCATION FACILITIES BOND ACT OF 2004.

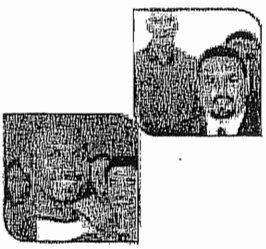
- This act provides for a bond issue of twelve billion three hundred million dollars ($12,300,000,000) to fund necessary education facilities to relieve overcrowding and to repair older schools.
- Funds will be targeted to areas of greatest need and must be spent according to strict accountability measures.
- Funds will also be used to upgrade and build new classrooms in the California Community Colleges, the California State University, and the University of California, to provide adequate higher education facilities to accommodate growing student enrollment.
- Appropriates money from General Fund to pay off bonds.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State costs of about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion) costs on the bonds. Payments of about $823 million per year.

Final Votes Cast by the Legislature on AB 16 (Proposition 55)

Assembly:	Ayes 71	Noes 8
Senate:	Ayes 27	Noes 11



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Propositions

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Proposition 57

Proposition 58

Bond Overview

ANALYSIS BY THE LEGISLATIVE ANALYST

Proposition 55

BACKGROUND

Public education in California consists of two distinct systems. One system includes local school districts that provide elementary and secondary (kindergarten through 12th grade, or "K-12") education to about 6.2 million pupils. The other system (commonly referred to as "higher education") includes the California Community Colleges (CCCs), the California State University (CSU), and the University of California (UC). The three segments of higher education provide education programs beyond the 12th grade to the equivalent of about 1.6 million full-time students.

K-12 Schools

School Facilities Funding. The K-12 schools receive funding for construction and modernization (that is, renovation) of facilities from two main sources—state general obligation bonds and local general obligation bonds. General obligation bonds are backed by the state and school districts, meaning that they are obligated to pay the principal and interest costs on these bonds.

- ***State General Obligation Bonds.*** The state, through the School Facility Program (SFP), provides money for school districts to buy land and to construct and renovate K-12 school buildings. Districts receive funding for construction and renovation based on the number of pupils who meet the eligibility criteria of the program. The cost of school construction projects is shared between the state and local school districts. The state pays 50 percent of the cost of new construction projects and 60 percent of the cost for approved modernization projects. (Local matches are not necessary in "hardship" cases.) The state has funded the SFP by issuing general obligation bonds. General Fund revenues would be used to pay these costs. These revenues come primarily from state income and sales taxes. Over the past decade, voters have approved a total of $20.1 billion in state bonds for K-12 school construction. About $1.9 billion of these funds remain available for expenditure.
- ***Local General Obligation Bonds.*** School districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last ten years, school districts have received voter approval to issue more than $37 billion of general obligation bonds.

Although school facilities have been funded primarily from state and local

general obligation bonds, school districts also receive significant funds from:

- ***Developer Fees.*** State law authorizes school districts to impose developer fees on new construction. These fees are levied on new residential, commercial, and industrial developments. Statewide, school districts report having received an average of over $400 million a year in developer fees over the last decade.
- ***Special Local Bonds (Known as "Mello-Roos" Bonds).*** School districts may form special districts in order to sell bonds for school construction projects. (These special districts generally do not encompass the entire school district.) The bonds, which require two-thirds voter approval, are paid off by charges assessed to property owners in the special district. Statewide, school districts have received on average about $270 million a year in special local bond proceeds over the past ten years.

K-12 School Building Needs. Under the SFP, K-12 school districts must demonstrate the need for new or modernized facilities. Through September 2004, the districts have identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. The state cost to address these needs is estimated to be roughly $16 billion.

Higher Education

California's system of public higher education includes 141 campuses in the three segments listed below, serving about 1.6 million students:

- The CCCs provide instruction to 1.1 million students at 108 campuses operated by 72 locally governed districts throughout the state. The community colleges grant associate degrees and also offer a variety of vocational skill courses.
- The CSU has 23 campuses, with an enrollment of about 331,000 students. The system grants bachelor and master degrees, and a small number of joint doctoral degrees with UC.
- The UC has nine general campuses, one health sciences campus, and various affiliated institutions, with a total enrollment of about 201,000 students. This system offers bachelor, master, and doctoral degrees, and is the primary state-supported agency for conducting research.

Over the past decade, the voters have approved $5.1 billion in general obligation bonds for capital improvements at public higher education campuses. Virtually all of these funds have been committed to specific projects. The state also has provided almost $1.6 billion in lease revenue bonds (authorized by the Legislature) for this same purpose.

In addition to these state bonds, the higher education segments have other sources of funding for capital projects.

FIGURE 1	
PROPOSITION 55 USES OF BOND FUNDS	
	Amount (in Millions)
K-12	
New construction projects	$5,260[a]

Modernization projects	2,250
Critically overcrowded schools	2,440
Joint use	50
Subtotal, K-12	($10,000)[b]
Higher Education	
Community Colleges	$920
California State University	690
University of California	690
Subtotal, Higher Education	($2,300)
TOTAL	$12,300
[a]Up to $300 million available for charter schools. [b]Up to $20 million available for energy conservation projects.	

- ***Local General Obligation Bonds.*** Community college districts are authorized to sell general obligation bonds to finance school construction projects with the approval of 55 percent of the voters in the district. These bonds are paid off by taxes on real property located within the district. Over the last decade, community college districts have received local voter approval to issue over $7 billion of bonds for construction and renovation of facilities.
- ***Gifts and Grants.*** The CSU and UC in recent years together have received on average over $100 million annually in gifts and grants for construction of facilities.
- ***UC Research Revenue.*** The UC finances the construction of new research facilities by selling bonds and pledging future research revenue for their repayment. Currently, UC uses about $130 million a year of research revenue to pay off these bonds.

Higher Education Building Plans. Each year the institutions of higher education prepare capital outlay plans in which they identify project priorities over the next few years. Higher education capital outlay projects in the most recent plans total $5.3 billion for the period 2003-04 through 2007-08.

PROPOSAL

This measure allows the state to issue $12.3 billion of general obligation bonds for construction and renovation of K-12 school facilities ($10 billion) and higher education facilities ($2.3 billion). Figure 1 shows how these bond funds would be allocated to K-12 and higher education.

Future Education Bond Act. If the voters do not approve this measure, state law requires the same bond issue to be placed on the November 2004 ballot.

K-12 School Facilities

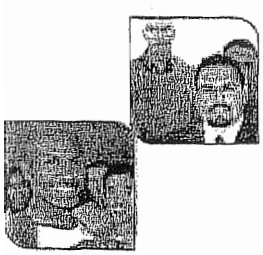

Figure 1 describes generally how the $10 billion for K-12 school projects would be allocated. However, the measure would permit changes in this allocation with the approval of the Legislature and Governor.

New Construction. A total of $5.26 billion would be available to buy land and construct *new* school buildings. A district would be required to pay for 50 percent of costs with local resources unless it qualifies for state hardship

funding. The measure also provides that up to $300 million of these new construction funds is available for charter school facilities. (Charter schools are public schools that operate independently of many of the requirements of regular public schools.)

Modernization. The proposition makes $2.25 billion available for the reconstruction or modernization of existing school facilities. Districts would be required to pay 40 percent of project costs from local resources.

Critically Overcrowded Schools. This proposition directs a total of $2.44 billion to districts with schools which are considered critically overcrowded. These funds would go to schools that have a large number of pupils relative to the size of the school site.

Joint-Use Projects. The measure makes a total of $50 million available to fund joint-use projects. (An example of a joint-use project is a facility constructed for use by both a K-12 school district and a local library district.)

Higher Education Facilities

The measure includes $2.3 billion to construct new buildings and related infrastructure, alter existing buildings, and purchase equipment for use in these buildings for California's public higher education systems. As Figure 1 shows, the measure allocates $690 million each to UC and CSU and $920 million to CCCs. The Governor and the Legislature would select the specific projects to be funded by the bond monies.

FISCAL EFFECT

The cost of these bonds would depend on their interest rates and the time period over which they are repaid. If the $12.3 billion in bonds authorized by this proposition is sold at an interest rate of 5.25 percent (the current rate for this type of bond) and repaid over 30 years, the cost over the period would be about $24.7 billion to pay off both the principal ($12.3 billion) and interest ($12.4 billion). The average payment for principal and interest would be about $823 million per year.

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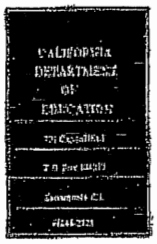
EXHIBIT D

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
FISCAL MANAGEMENT ADVISORY 97-02

DELAINE EASTIN
State Superintendent of Public Instruction



FISCAL MANAGEMENT ADVISORY 97-02

October 30, 1997

TO: County and District Superintendents

FROM: Patrick Keegan, Deputy Superintendent
Finance, Technology, and Information Services

SUBJECT: Fees, Deposits, and Other Charges

School district administrators frequently ask the Department to provide additional guidance on the matter of fees. This Advisory which supersedes Fiscal Management Advisory 87-03 is provided for that purpose, and reflects the most recent legislation and California Supreme Court interpretations. The following narrative contains a number of conclusions based on legal references. Most of these references are to a particular case or opinion. Those conclusions without attribution represent the opinions of the Department's Legal Office.

TUITION, FEES, DEPOSITS, AND OTHER CHARGES IN CALIFORNIA PUBLIC SCHOOLS, K-12 AND ADULT SCHOOLS

I. A Free Public School System

> "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."[1]

With this language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation, or "law" of the State Board was promulgated based on the authority of Article IX, Section 5 of the California Constitution. Article IX, Section 5 provides for a free school system:

> "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

The State Supreme Court in 1874 held that this provision entitled students to be educated at public expense.[2]

The Attorney General has, in several opinions, [3]consistently ruled that school districts do not have authority to levy fees for any elective or compulsory class. Further, districts may not require security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment.

The administrative regulation noted above prohibited fees except those "...specifically authorized by law." Certain fees have been authorized by law since the rule was promulgated.

The 1984 California Supreme Court decision, Hartzell v. Connell,[4] raises serious questions about the imposition of a non-statutory fee for extracurricular activities. The lead opinion acknowledges that fees may be charged for "recreational" activities but not for "educational" activities. Extracurricular activities are described in the opinion as an integral component of public education; they are a part of the educational program according to this decision.

The court held that the "...imposition of fees for educational activities offered by public high school districts violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship."

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[1]Title 5 California Code of Regulations, Section 350
[2]Wade v. Flood, 48 Cal. 36, 51 (1874)
[3]Ops. Cal. Atty. Gen. No. NS-4114, 1942
[4]35 Cal. 3d 899 (1984)

II. Fees Authorized by Law

The Education Code specifically authorizes certain fees. Except for home to school transportation fees discussed later, none of those Code sections have been challenged and the Hartzell v. Connell decision did not directly rule on their legality. Therefore, districts may continue to levy fees as authorized in the following Education Code sections:

A. Fees that a district may collect for furnishing materials to a pupil for items the pupil has fabricated from such materials for his or her own use. Such fees may not exceed cost. (Education Code section 39526)

B. Fees that a district may charge pupils for transportation to and from school under limited circumstances. (Education Code sections 38028, 39807.5 and 39837)

C. Charges for food served to pupils. (Education Code sections 39870-39874, 39876)

D. Charges to the parent or guardian of any pupil who loses a book, defaces books or other school property. Liability limits for lost items or damage are adjusted annually by the State Superintendent of Public Instruction pursuant to statute. (Education Code section 48904)

E. Charges for field trips or excursions, principally for transportation. The authority to charge a fee for field trips or excursions is not directly stated in the Education Code. Rather, it provides that "No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds." (Education Code section 35330)

F. Districts must make medical, hospital, or accident insurance available to pupils who may be injured while participating in field trips. The cost of the insurance may be paid by the pupil or his parents. (Education Code section 35331)

G. Governing boards may expend from the general fund of the district any money which is budgeted for community services to establish and maintain community service classes. They may charge student fees not to exceed the cost of maintaining such classes. (Education Code section 51815)

H. A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. (Education Code section 52612)

I. Districts must provide, and each member of an athletic team must have, accidental death, injury and medical insurance coverage. The cost of such insurance may be paid by the pupil unless the pupil is unable to pay for such insurance. (Education Code sections 32220-32224)

J. A school district may require a deposit from a borrower of school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (Education Code section 40015)

K. Pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state shall be charged a tuition fee. (Education Code sections 48050 and 48052)

L. The regulations of the governing board may provide for the sale of materials purchased from the incidental expense account to pupils in classes for adults, for use in connection with such classes. The proceeds of all such sales shall be deposited in that account (Education Code section 52615). A high school district board may charge for textbooks used in classes for adults or impose a refundable deposit on loaned books. (Education Code section 60410)

M. The governing board of a school district may sell class material to persons enrolled in classes for adults. This may include materials necessary for the making of articles by students enrolled in adult education. The materials shall be sold at not less than the cost to the district; any article made shall be the property of the person who made it. (Education Code section 39527)

N. The governing board of any elementary, high, or unified school district may charge a fee for school camp programs, provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of non-payment of the fee. (Education Code section 35335)

O. Families utilizing child care and development services shall be charged a fee by the school district, but no fees shall be assessed against families whose children are enrolled in the state preschool program, or for such services provided to severly handicapped children (Education Code sections 8263(e)(f) and 8230(d).). Standards for fees appear in Education Code section 8265. The school district may also impose a fee for a program of supervision of children before and after school. (Education Code section 8487 and 8488)

P. School districts may offer a fingerprint program for children in kindergarten or newly enrolled children and shall assess a fee to the parent or guardian who chooses to participate. (Education Code section 32390)

III. District Obligation to Provide Without Charge

The opinions of the Attorney General mentioned earlier indicate that charges may not be levied for the following:

A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property.

B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.

C. A tuition fee or charge as a condition to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.

D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school.

E. Education Code section 48053 prohibits charging an apprentice, or his or her parents or guardian, for admission or attendance in any class.

F. Textbooks and workbooks must be furnished without charge by elementary and high school districts except for classes for adults. A charge may not be made for their use (Education Code sections 60070 and 60410).

Education Code section 40011 provides:

> "Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing board of the school district."

The Attorney General has issued an opinion interpreting this language. He was asked specifically whether a student could be required to furnish any or all of the following:

A. Art material for art classes and mechanical drawing sets

B. Cloth to be used in dressmaking classes and wood for carpentry classes

C. Gym suits and shoes for physical education classes

D. Bluebooks in which to write a final examination

E. Paper on which to write a theme or report when such theme or report is a required assignment.

The Attorney General concluded that all the above-mentioned materials were "necessary supplies" and as such had to be furnished by the school district. He reasoned that the articles listed in A, B, C, and D, "appear to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects involved." As to E, the Attorney General stated that "paper to be used on which to write a theme or report must also be furnished when required as a part of the classroom activity."[5]

The Attorney General limited his discussion to the questions specifically asked and did not state what materials a district is not obligated to furnish. However:

> "[s]upplies,...must be furnished free of cost to students when the supplies are what might be termed 'school supplies' and are necessary in order for the students to pursue a course of study."

The Attorney General's use of the term "school supplies" is meant to exclude from the district's obligation those items or materials which, although necessary for class participation, are essential regardless of whether or not a person is a student. For example, a school district would not be obligated to furnish corrective lenses, clothes, and so forth. Such items are needed whether or not one is a student.

Specifically with respect to gym clothes, Education Code section 49066(b) states that: "No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil," such as, for example, lack of funds.

It should be determined whether a fee for a particular item is specifically authorized by statute. If not, it should be determined whether a particular item is required by law to be furnished free or whether it comes under the category of "necessary supplies." If it does, then the district must furnish the item without charge.

It is the position of the Department that a school district may require its students to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of included logos, school name or other characteristics not found on clothing for general use outside of school, they are school supplies and the district must provide those uniforms free of charge.

It is the opinion of the Department's legal office that a school district may not charge a fee or require students to purchase necessary materials even if the

[5]Ops. Cal Atty. Gen. No. NS-4414, 1942

district maintains a special fund to assist students with financial need or waives such fee or charge for students with financial need. The fee or charge still remains a condition for all other students not so assisted. The court in Hartzell v. Connell, discussed below, held that a fee-waiver policy for needy students does not save the fee.

IV. Extracurricular Activities

On April 20, 1984, the California Supreme Court decided, in Hartzell v. Connell 35 Cal. 3d 899, that a public school district may not charge fees for educational programs simply because they are denominated "extracurricular." As expressed by the lead opinion, the court concluded that "the imposition of fees as a precondition for participation in non-statutory educational programs offered by public high schools on a noncredit basis violates the free schools guarantee of the California Constitution and the prohibition against school fees contained in Title 5, Section 350 of the California Administrative Code." (now California Code of Regulations).

Some significant observations by the various justices and ramifications of the decision are as follows:

A. The lead opinion was written by Chief Justice Bird with Justices Broussard and Reynoso concurring specifically. The approach taken to the issue by the Chief Justice holds that the free school guarantee extends to all activities which constitute an integral, fundamental part of elementary and secondary education or which amount to necessary elements of any school's activity. The opinion concludes that extracurricular activities constitute an integral component of public education.

B. The lead opinion holds that fee based extracurricular activities are also illegal under Title 5 California Code of Regulations 350 (5 CCR 350) which prohibits the imposition of "...any fee, deposit, or other charge not specifically authorized by law."

C. Apart from the fee issue, this particular holding has wide reaching significance. Along with constitutional provisions and statutes, any regulation adopted by the State Board of Education or Superintendent of Public Instruction is a "law." Education Code section 35160, the so-called "permissive code" authority allows school districts to carry on any activity or act in any manner "...which is not in conflict with or inconsistent with, or preempted by, any law..."

D. As noted above, several provisions of the Education Code permit school districts to impose charges or fees, e.g.: Section 35330 (field trips and excursions), Section 48909 (charge for lost textbook), Section 35335 (school camps), Sections 32220-32224 (requires members of athletic teams to purchase death, accident and hospital insurance), Section 40015 (deposit for use of a school musical instrument), Section 39804 (pupil transportation), and so forth. In

his separate opinion, in which he concurs in the judgment, Justice Kaus raised the question whether, under the decision, any of the statutory fees and charges (Paragraph II, supra) would be unconstitutional. Because none of the statutory fees were in issue, the court made no ruling in that respect. The Hartzell decision is binding precedent for invalidation of any non-statutory fees of the type examined by that court. Except for home to school transportation fees (Section 39807.5), the constitutionality of the statutory fees and charges is yet to be judicially decided.

E. In a footnote the lead opinion states that the: "[e]ducational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events." This statement may cause future litigation on the issue of whether the challenged fee based activity is educational or recreational. The issue is complicated by the fact that while citing an athletic event as possibly being recreational, the court invalidated a fee based athletic activity because it was held to be educational. This could be reconciled by interpreting the footnote as allowing a fee if the participation is solely as a spectator.

F. The defendants argued that their fee-waiver policy for needy students satisfies the requirements of the free school requirement. They suggested that the right to be educated at public expense amounts merely to a right not to be financially prevented from enjoying educational opportunities. The court answered that such an argument plainly contradicts the plain free school language of the Constitution.

V. Home to School Transportation Fees

Education Code section 39807.5 allows school districts to charge parents a fee for home to school transportation provided to their children by the district. On a constitutional challenge the California Supreme Court in Arcadia School District v. State Department of Education,[6] upheld the transportation fee statute. According to the court, permitting school districts to charge parents and guardians for the transportation of students to and from school does not violate the California Constitution free school guarantee. Unlike the extracurricular activities held to be free in Hartzell v. Connell (supra), transportation is neither an educational activity nor an essential part of school activity. Home to school transportation is not included within the free school guarantee.

[6] 2 Cal.4th 251 (1992)

VI. Tuition for Summer School.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any fee or charge is prohibited under Section 350 of Title 5 California Code of Regulations (supra at page 1), which according to the court in Hartzell v. Connell (supra), is a law within the meaning of the so-called permissive provisions of Education Code section 35160.

VII. Community Service Classes

The governing board of a school district is authorized to maintain community service classes and to charge fees to cover the costs of maintaining such classes (Education Code sections 51810 and 51815). These classes may be convened at any time during the school year as may be determined by the governing board (Education Code section 51812).

Community service classes are not intended to teach required courses that students in grades K-12 must complete as part of their instructional programs. Community service classes usually include classes in music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, athletics, and other such classes of general interest to the community (See Education Code, section 51810). These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes (Education Code, section 51811). It is the Department's position, therefore, that community service classes may not be used as summer schools for K-12 students, except for the incidental attendance of students with special interest in the subjects being taught.

VIII. Summer Schools Conducted Under Contract by Private Parties

The provisions of law relating to contracts whereby private parties conduct a portion of the educational program are not entirely clear. Neither the California Constitution nor the Education Code specifically prohibits contracts for educational services. Education Code section 35160 authorizes districts to engage in any activity not prohibited by law.

Section 6, Article IX, of the California Constitution prohibits a school district from transferring, directly or indirectly, any part of the public school system, or the placing of any part of the public school system under the jurisdiction of any authority other than a public school authority. This constitutional provision was explained in CTA v. Fullerton.[7] That case involved a school district which let a contract for a private vendor to conduct its driver training program. The court held that the district had not transferred a part of the school system, but only a part of the curriculum. The court's reasoning is that the curriculum is only a function of the system and not a part of the system. This reasoning would seem also to validate contracting for a summer school program. However, in dicussing this constitutional prohibition, the court stated that the Constitution would be violated if the control and management of the driver training program were to be transferred to a private authority. This would be true because the various

[7] 82 Cal.App.3d 249, 1978

administrative units authorized to maintain and administer the curriculum with the public school system constitute, along with the curriculum, a part of the system. Thus, contracting for a summer school program would be valid under Article IX, Section 6 only if the school district maintains exclusive control and management of the educational program.

The requirement for the maintenance of control and management, however, places the contracting district in a legally impossible position when tuition fees are charged. If the contractor providing the program charges tuition the district might thereby be in violation of the prohibition against tuition charges.

IX. Leasing School Buildings for Educational Use.

The Education Code provides authority for school districts to lease, or allow the use of, unneeded school buildings and classroom space, or to enter into joint occupancy or joint use agreements with private entities including private schools. (Education Code sections 39360, 39379, 39380, 39381, 39440, 39444, 39470, and 40040, et seq.)

When authorizing school buildings to be used by another entity for a summer school program, however, the district should consider the following:

A. When leasing to a sectarian organization, the district must avoid violating the religious establishment prohibition of the First Amendment to the United States Constitution. According to the California Attorney General, a school district cannot lease or loan vacant classrooms to a sectarian institution for religious purposes while public school is concurrently in session.[8]

B. The use granted under the Civic Center Act must not result in a monopoly for the benefit of any person or organization. (Education Code section 40041 et seq.) (Effective 1/1/98 renumbered to 38130)

X. Charter Schools.

Education Code section 47605(d) prohibits a charter school from charging tuition, but does not mention fees or other charges. Should it be argued that a certain educationally based fee or other charge is not in the nature of a tuition, the charter school would, nevertheless, be prohibited from assessing them. Although a charter school is exempt from the laws governing school districts (Education Code section 47610), the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, any tuition, fee or other charge relating to the charter school's educational program is prhibited by the free school guarantee of the California Constitution Article IX, Section 5, as interpreted in Hartzell v. Connell, supra.

[8]60 Ops. Cal. Atty. Gen. 269

XI. Educational Clinics.

A certified clinic may not charge any fee for services to any pupil or to the parent, guardian, or custodian of any pupil for which the clinic receives reimbursement (Education Code section 58557)

The purpose of this advisory is to inform school districts and county superintendents of the existing law involving fees in the schools and to cite various cases and opinions on the subject. Except with respect to statutes and decisions of courts, regulations and court decisions this Advisory is merely exemplary and compliance therewith is not mandatory, nor is there any intent to suggest a particular course of action. Each local educational agency should seek the advice of its own legal counsel in the development of local policy.

Questions about this advisory may be directed to the Department's Legal Office, 916-657-2452.

SixTen and Associates
Mandate Reimbursement Services

EXHIBIT D

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March 31, 2008

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 03-TC -17
California Environmental Quality Act (CEQA)

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Titles 5 and 14, CCR, sections included in the test claim.

Sincerely,

Keith B. Petersen

C: Michael Johnston, Assistant Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	No. CSM. 03-TC-17
Test Claim Filed September 29, 2003	California Environmental Quality Act
by **Clovis Unified School District**	History Index for Title 5, California Code of Regulations
	Section 14011 Section 57121

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 70-03 § 14010 (§ 14011): New Chapter 1 (§§ 14000, 14001, 14010, 14020, 14021, 14030 through 14033, 14040 through 14045). Approved nunc pro tunc by State Building Standards Commission as to

any building standards involved. Information only. Register unavailable.

Register 74-17 § 57121: New Chapter 2 (§§ 57100 through 57140, not consecutive).

Register 77-39 § 14010 (§ 14011): Amendment of section and note.

Register 77-45 § 57121: Amendment of section.

Register 83-18 § 57121: Amendment of section.

Register 91-23 § 57121: Amendment of section filed by Board of Governors of California Community Colleges with the Secretary of State. Submitted to OAL for printing, only pursuant to Education Code § 70901.5(b).

Register 93-46 § 14011: Renumbering and amendment of former § 14010 to § 14011 and adoption of note.

Register 95-23 § 57121: Editorial correction of History 3.

Register 2000-44 § 14011: Amendment of section heading, section and note.

Subsequent Registers: There may be changes to the regulations after the date the test claim was filed, which are not included.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 31 day of March, 2008, at Sacramento, California

FOR THE TEST CLAIMANT
Keith Petersen, President
SixTen and Associates

ATTACHMENT
Exhibit A Title 5, CCR Registers

DIVISION 13. SCHOOL FACILITIES AND EQUIPMENT

CHAPTER 1. SCHOOL HOUSING
CHAPTER 4. SCHOOL BUSES

CHAPTER 1. SCHOOL HOUSING

Article
1. General Standards
2. School Sites
3. Attendance Areas and Practices.
4. Planning and Approval of School Facilities
5. State School Building Aid

Detailed Analysis

Article 1. General Standards

Section
14000. Policy Declaration
14001. Minimum Standards

Article 2. School Sites

Section
14010. Procedure for Site Acquisition

Article 4. Planning and Approval of School Facilities

Section
14030. Preliminary Procedure
14031. Submissions to Bureau of School Facilities Planning
14032. Plan Approval
14033. Planning Guides

Article 5. State School Building Aid

Section
14040. Scope of Article
14041. Plans
14042. Justification Procedure
14043. Approval
14044. Change Orders
14045. Abandonment of Inadequate Facilities
14046. Building Area Required to Provide Adequate Facilities for Exceptional Children

Article 1. General Standards

14000. Policy Declaration. The State Board believes that it is the right of each school child in California to have access to adequate facilities for a modern program of education. In pursuit of this policy, the State Department of Education has assigned the Bureau of School Facilities Planning to fulfill the Depart [illegible] with respect to: directing the planning of educatio adequacy of educational facilities; and tricts in matters pertaining to plannin ties.

77-39

NOTE: Authority cited for Article 1: Sections Code.

History: 1. New Chapter 1 (§§ 14000, 14001, 14040 through 14045) filed 1-14-' proved nunc pro tunc by State I building standards involved (Re
2. Amendment of section and N thereafter (Register 77, No. 39)

14001. Minimum Standards. Up reau of School Facilities Planning, th tional facilities hereafter planned by

(a) Evolved from a well-documen gram requirements.

(b) Master-planned to provide for a saturation enrollment.

(c) Properly located on an adequate site.

(d) Designed for the environmental comfort and work efficiency of the occupants.

(e) Designed to require a practical minimum of maintenance.

(f) Designed to meet legal requirements for structure, fire, and panic safety.

(g) Engineered to permit remodeling for future reassignment of space.

History: 1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Article 2. School Sites

14010. Procedure for Site Acquisition. A school district, before acquiring title to real property for school use, shall:

(a) Prepare a statement of policies covering the range and organization of grades to be served, the transportation of pupils, and the ultimate maximum pupil enrollment to be housed on the site.

(b) Prepare maps showing present and proposed school sites, significant roads or highways, unsanitary or hazardous installations, such as airports or industries and the indicated boundary of the pupil attendance area to be served.

(c) Meet with appropriate local government, recreation, and park authorities for the purposes set forth in Education Code Section 35275.

(d) Obtain, from the local planning agency having jurisdiction, a written report of its investigations and recommendations for each proposed site as required by Education Code Section 39004.

(e) Request a preliminary conference with a field representative from the Bureau of School Facilities Planning and in consultation review and evaluate sites under final consideration.

(f) Comply with Education Code Section 39002, with particular emphasis upon an engineering investigation made of the site to preclude locating the school on terrain that may be potentially hazardous.

(g) Secure a written site review ("School Site Report" latest edition) prepared by a bureau field representative for those sites that the district intends to acquire. (Section 39101(a), Education Code.)

NOTE: Authority cited for Article 2: Sections 39000, 39100 and 39101, Education Code.

History: 1. Amendment of section and NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Article 3. Attendance Areas and Practices

History: 1. Repealer of Article 3 (Sections 14020–14021) filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history, see Register 70, No. 11; Register 70, No. 26 and Register 71, No. 1.

Article 4. Planning and Approval of School Facilities

14030. Preliminary Procedure. Each school district, except districts governed by a city board of education, before authorizing the preparation of plans for the erection of, addition to, or remodeling of any school building with a construction cost totaling $5,000 or more, shall:

(a) Request a conference with a field representative of the Bureau of School Planning. The purpose of this conference is to establish and justify the need for new construction; to review the history and problems of existing school facilities; to discuss how educational facility needs will be determined; and review appropriate architectural selection procedures.

(b) Secure basic planning procedure forms from the Bureau of School Facilities Planning and instructions needed to complete these forms.

(c) Prepare educational specifications. This means that district personnel should prepare for consideration by the governing board a written statement of the goals, objectives, and policies which determine the educational program of the district and against which the success of the program is evaluated. Such statement, as it may be modified by the governing board following its consideration, when adopted by resolution of the governing board constitutes the educational specifications. Among other matters which the district personnel and governing board shall include in their consideration are the following:

(1) The size of the school best adapted to the various grade levels it is intended to serve.

(2) Probable changes in curriculum content or teaching methodology that will influence the design of the schools, (for example, the need for resource material centers, the use of teaching machines, organization for large and small groupings of students, and the like).

(3) The recommendations of the Bureau of School Facilities Planning on heating and ventilating or air conditioning, use of nonstructural interior walls, brightness control and distribution patterns of both daylight and electric light sources, a balanced acoustical environment, and other environmental criteria.

(4) Community functions that the school should serve that will influence its design.

(d) Prepare essential program information for the district architect so he can begin preliminary design studies.

NOTE: Authority cited for Article 4: Sections 39100, 39101 and 39118, Education Code.

History: 1. Amendment of section and NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

14031. Submissions to Bureau of School Facilities Planning. Following compliance with the requirements of Section 14030 and approval of those preliminary procedures by the Bureau of School Facilities Planning, the district shall:

(a) Submit to the Bureau of School Facilities Planning a site utilization plan, preliminary plans, and an outline of specifications for evaluation approval. The completed basic planning procedure forms shall also be submitted at this time. The preliminary plans shall reflect compliance with Chapter 7, Government Code, Sections 4450–4453 (access to public buildings for physically handicapped persons) where applicable. (See also required compliance with Division T24, Part 6, Title 24, California Administrative Code, where applicable.)

(b) Prepare and submit final working drawings and specifications to the Bureau of School Facilities Planning for approval.

(c) Submit addenda to the final plans for approval by the Bureau of School Facilities Planning prior to bidding. When bids have been rejected by the governing body, submit revised plans for review and approval.

History: 1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

14032. Plan Approval. New school construction cannot be advertised for bids until written approval of final plans and specifications is given by the Bureau of School Facilities Planning. Approvals for either preliminary or final drawings are in effect for a maximum of one year from the date of signed approval.

History: 1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

14033. Planning Guides. The latest edition of *The Guide for Planning Educational Facilities*, published by the Council of Educational Facility Planners, 29 West Woodruff Avenue, Columbus, Ohio, 43210, may be used as a guide in developing school building plans.

Article 5. State School Building Aid

14040. Scope of Article. This article prescribes the procedure for securing Department of Education approval of facilities under the State School Building Aid Law of 1952 contained in Chapter 8 of Part 10 of the Education Code. Attention is directed to the rules and regulations of the State Allocation Board contained in Title 2 of the California Administrative Code, which must also be followed for final approval of a construction project.

NOTE: Authority cited for Article 5: Sections 16044, 16047, 16104 and 16190–16207, Education Code.

History: 1. Amendment of section and NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

14041. Plans. Plans for a construction project requiring state school building aid shall be prepared in accordance with the procedure outlined in Article 4 of this chapter, and shall be limited specifically to building areas and facilities approved by the Department of Education.

14042. Justification Procedure. In order to secure approval by the Department of Education of facilities for state school building aid (including school sites), a district shall prepare a justification document on the forms furnished, and in the manner therein prescribed, by the Bureau of School Facilities Planning, Department of Education. Exceptions may be made to any of the provisions set forth in the justification document when the State Department of Education finds that under the specific circumstances described by a district the application of the provisions would be inequitable or would result in an undue hardship to the pupils of the district affected.

History: 1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

14043. Approval. When an applicant district's justification document for a construction project is approved by the Department of Education, the department shall send a letter of approval to the district and to the district architect. After the district has applied to the State Allocation Board, the Department of Education shall approve the construction project to the Department of General Services.

14044. Change Orders. Change orders for a construction project requiring state school building aid shall be approved by the Department of Education.

14045. Abandonment of Inadequate Facilities. Abandonment of inadequate facilities may be recommended by the Department of Education to the State Allocation Board for approval when it appears from the estimated cost of structural rehabilitation plus the estimated cost of desirable modernization that the facility would meet the criteria for replacement established by the State Allocation Board.

14046. Building Area Required to Provide Adequate Facilities for Exceptional Children. Pursuant to Section 1801 of Title 2 of the California Administrative Code and Sections 16014, 16044, 16190–16207 and 39101 of the Education Code, the Department of Education finds that, in the absence of extraordinary circumstances, the building area computed in the following manner is proper and adequate for the education of physically handicapped minors defined in Section 56701 (a), (b), (c), (d), and (e); educationally handicapped minors as defined in Section 56600; and mentally retarded minors as defined in Sections 56501 and 56515 of the Education Code. (When extraordinary circumstances exist, the building area required to provide adequate facilities for any category of such minors shall be determined by the Department of Education in accordance with the specific requirements of the applicant district.)

(a) **Special Class Instructional Area.** Except as provided in (b) and (c), the building area shall be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increasing the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	*Building Area Allowance*
Deaf or Severely Hard of Hearing	1,300 sq. ft.
Blind or Partially Seeing	1,300 sq. ft.
Orthopedic or Other Health Impaired	2,000 sq. ft.
Educationally Handicapped	1,300 sq. ft.
Educable Mentally Retarded	1,400 sq. ft.
Trainable Mentally Retarded	1,860 sq. ft.
Aphasic	1,300 sq. ft.

(3) When facilities are to be constructed for orthopedic or other health impaired minors, additional building area allowances shall be made for elementary schools to provide adequate space for occupational therapy, physical therapy, and related auxiliary services of up to 5,200 square feet if the facility is designed for one to three classes and up to 7,000 square feet of four to eight classes. Facilities constructed for junior and senior high schools shall be allowed additional building area of up to 600 square feet for auxiliary services.

(4) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(5) When facilities are to be constructed for deaf, hard of hearing, blind, partially seeing and educable mentally retarded minors, additional building areas shall be allowed in the junior and senior high schools. Facilities in junior high schools shall be allowed additional building area of up to 300 square feet. Facilities in senior high schools shall be allowed additional building area of up to 400 square feet.

(b) **Area for Pupils Six Years of Age or Less.** The area required to provide adequate facilities for physically handicapped and severely mentally retarded pupils six years of age or less, shall be determined by the Department of Education upon the specific requirements in each applicant district.

(c) **Separate Facilities.** The area required to provide adequate facilities for physically handicapped or severely mentally retarded pupils constructed separate from the regular school building shall be determined by the Department of Education upon the specific requirements in each applicant district.

(d) **Remedial Speech and Other Special Services Area.** Building area shall be computed as follows:

(1) Divide the number of speech handicapped pupils by 75 and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by 200 square feet. No facility so planned and constructed shall exceed 200 square feet.

History: 1. New section filed 9-10-71; effective thirtieth day thereafter. Approved by State Building Standards Commission (Register 71, No. 37).

2. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

DIVISION 8. CONSTRUCTION

Detailed Analysis

CHAPTER 1. COMMUNITY COLLEGE CONSTRUCTION ACT

SUBCHAPTER 1. GENERAL PROVISIONS

Section
57000. General Provisions
57001. Definitions
57002. Federal Fund Proration
57003. Projecting Graded and Ungraded Enrollments
57020. Standards
57021. Classroom Use
57022. Laboratory Use
57023. Classroom Occupancy
57024. Laboratory Occupancy
57025. Classroom Space Per Station
57026. Small College, Sliding Scale Allowance
57027. Future Assignable Space
57028. Capacity of Future Laboratory and Service Areas
57029. Office Space
57030. Library Space
57031. Abbreviations
57032. Formula for Deriving the Standards

CHAPTER 2. ENVIRONMENTAL QUALITY

Article 1. General

Section
57100. Authority
57101. Purpose

Article 2. Guidelines

Section
57120. Basic Guidelines
57121. Application

Article 3. Procedures

Section
57140. Procedures

CHAPTER 1. COMMUNITY COLLEGE CONSTRUCTION ACT

SUBCHAPTER 1. GENERAL PROVISIONS

57000. General Provisions. For the purposes of the administration of the Community College Construction Act, the provisions of this chapter apply.

NOTE: Authority cited for Chapter 1: Sections 193, 197 and 20054, Education Code. Reference: Ch. 19 (commencing with Sec. 20050), Div. 14, Education Code.

History: 1. Repealer of Chapters 1 and 2 (§§ 57000 through 57121, not consecutive) and new Chapter 1 (§§ 57000 through 57032, not consecutive) filed 11-2-73; effective thirtieth day thereafter (Register 73, No. 44).

57001. **Definitions.** For the purposes of this chapter:

(a) "Student contract hours" means the actual or estimated total number of programmed class periods per week for a student.

(b) "A small Community College" means a college with 35,000 or fewer weekly student contact hours (WSCH) in graded and ungraded day and evening programs.

(c) "Handbook of Definitions" refers to the publication of that name issued by the Chancellor.

(d) "Leased or rented" means a building for which lease or rental costs are paid, and the use of which will be discontinued upon the completion of the project for which application has been submitted.

(e) "Permanent building" means a building for which there is no plan for removal or demolition and, so far as is known, will remain as a facility on the campus.

(f) "Temporary building" means an on-campus building of limited worth which, according to the capital construction master plan, is anticipated to be demolished or replaced within a decade. All other buildings should be considered permanent.

(g) "Federal funds" means money provided by the federal government to the district operating a Community College for the project or any part of the project which will be available to the district under the following acts: Higher Education Facilities Act of 1963, Higher Education Act of 1965, National Defense Education Administration, Public Law 815, and the Vocational Education Act of 1968 (Public Law 90-576), including subsequent amendments to it.

(h) "Assessed valuation of the district" means the total assessed valuation of all the property within the district, modified by provisions of Education Code Section 17262 (Collier Factor).

(i) Types of rooms and their codes, standard abbreviations, and definitions are the same as those used in the Instructions for Forms P-1 and P-2 (California Public Higher Education Cost and Statistical Analysis), issued by the Coordinating Council for Higher Education.

(j) Standard classifications of subject matter and their codes, standards abbreviations, and definitions are the same as those used in the Standard Classification of Subject Fields and Services (California Public Higher Education Cost and Statistical Analysis) issued by the Coordinating Council for Higher Education.

57002. **Federal Fund Proration.** When the physical detail and intent of a project subject to a federal grant differs materially from the physical detail and intent for which state funds are appropriated, the federal funds shall be prorated on the scope of the project subject to the federal grant and that prorata share be made applicable to the project subject to state matching funds.

57003. **Projecting Graded and Ungraded Enrollments.** The projected growth in graded and ungraded enrollment determined for each district by the State Department of Finance shall be developed by using the procedure specified in the Handbook of Definitions. Exceptions to the procedure may be made by the State Department of Finance for newly formed Community College districts or for the other districts where unusual circumstances justify them. Each exception shall be noted and reported to the Chancellor.

CHAPTER 2. ENVIRONMENTAL QUALITY

Article 1. General

57100. Authority. The regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (Division 13 commencing with Section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code.

NOTE: Authority cited: Section 193, Education Code and Section 21082, Public Resources Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

History: 1. New Chapter 2 (Sections 57100 through 57140, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).

57101. Purpose. The purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of Community College construction projects.

Article 2. Guidelines

57120. Basic Guidelines. It is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in Division 6, Title 14, California Administrative Code, Section 15000 et. seq.

57121. Application. (a) **New Sites for College Facilities.** When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (Section 15080, Title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) **New Campuses.** The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) **Submission of Proposed Projects.** (Section 20075 of the Education Code.) The Chancellor shall require that an Initial Study, pursuant to Section 15080, Title 14, California Administrative Code, be submitted to his office concurrent with other required information.

(d) **Preliminary Plans for Proposed Project.** (Section 20079 of the Education Code.) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (Section 15023, Title 14, C.A.C.); Negative Declaration (Section 15083, Title 14, C.A.C.); or Notice of Completion (Section 15085(c), Title 14, C.A.C.), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) **Approval of Plans.** The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (Section 15085(g), Title 14, C.A.C.), whichever is appropriate, be submitted to his office concurrently with plans submitted for approval in accordance with Section 15409 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

Article 3. Procedures

57140. Procedures. Authority is delegated to the Chancellor of the California Community Colleges or his designee to adopt procedures to carry out provisions of this Chapter.

CHAPTER 2. ENVIRONMENTAL QUALITY

Article 1. General

57100. Authority. The regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (Division 13 commencing with Section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code.

NOTE: Authority cited for Chapter 2: Section 71020, Education Code and Section 21082, Public Resources Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

History: 1. New Chapter 2 (Sections 57100 through 57140, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

57101. Purpose. The purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of Community College construction projects.

Article 2. Guidelines

57120. Basic Guidelines. It is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in Division 6, Title 14, California Administrative Code, Section 15000 et. seq.

57121. Application. (a) **New Sites for College Facilities.** When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (Section 15080, Title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) **New Campuses.** The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) **Submission of Proposed Projects.** (Section 81830 of the Education Code.) The Chancellor shall require that an Initial Study, pursuant to Section 15080, Title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information.

(d) **Preliminary Plans for Proposed Project.** (Section 81834 of the Education Code.) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (Section 15023, Title 14, C.A.C.); Negative Declaration (Section 15083, Title 14, C.A.C.); or Notice of Completion (Section 15085(c), Title 14, C.A.C.), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) **Approval of Plans.** The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (Section 15085(g), Title 14, C.A.C.), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with Section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

Article 3. Procedures

57140. Procedures. Authority is delegated to the Chancellor of the California Community Colleges or the Chancellor's designee to adopt procedures to carry out provisions of this Chapter.

History: 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).

CHAPTER 2. ENVIRONMENTAL QUALITY

57100. General.

(a) The regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (Division 13 commencing with Section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code.

(b) The purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of community college construction projects.

(c) It is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in Division 6, Title 14, California Administrative Code, Section 15000 et seq.

NOTE: Authority cited: Sections 71020 and 71062, Education Code, and Section 21082, Public Resources Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY:

1. New Chapter 2 (Sections 57100 through 57140, not consecutive) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Article 1 heading and amendment of section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

57101. Purpose.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

57120. Basic Guidelines

HISTORY:

1. Repealer of Article 2 heading and Section 57120 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

57121. Application.

(a) When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (Section 15080, Title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long-range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) The Chancellor shall require that an Initial Study, pursuant to Section 15080, Title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information.

(d) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (Section 15023, Title 14, California Administrative Code); Negative Declaration (Section 15083, Title 14, California Administrative Code); or Notice of Completion (Section 15085(c), Title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (Section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with Section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

57140. Procedures.

Authority is delegated to the Chancellor of the California Community Colleges or the Chancellor's designee to adopt procedures to carry out provisions of this Chapter.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Section 71091, Education Code; Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY:

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of Article 3 heading and new NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

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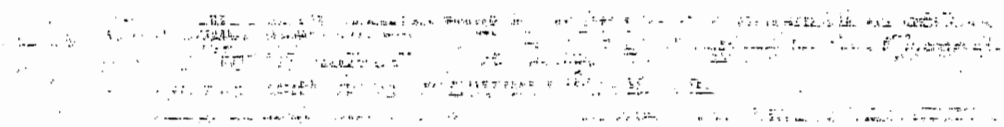


(b) Upon securing approval of a proposed energy conservation project by all appropriate review agencies, the governing board of a community college may submit to the Chancellor for approval, or disapproval, preliminary plans for the project.

(c) Preliminary plans for energy related projects shall include:

(1) The results of a technical audit (TA) performed by an authorized Technical Auditor which describes in detail the energy conservation measures the project is to institute.

(2) The status of the project as related to the various federal and state aided programs for energy conservation.

(3) An architectural and/or engineering analysis setting forth the detailed costs of the various elements of the project.

NOTE: Authority cited: Sections 66700, 70901, and 81805, Education Code. Reference: Sections 70901, and 81800–81839, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57060. Legislative Findings, Declarations and Intent; Energy Conservation.

The Board of Governors finds and declares that it is in the interest of the state and of the people thereof for the state to aid community college districts in finding cost–effective methods of conserving energy in buildings maintained by the districts. The Board of Governors also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of district buildings, that the costs involved in improving existing facilities to become more energy efficient are often prohibitive.

It is the intent of the Board of Governors in adopting this regulation to encourage community college districts to retrofit buildings so as to conserve energy and reduce the costs of supplying energy.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57061. Community College Districts, Borrowing; Retrofitting Buildings for Energy Conservation; Savings and Loan Investment.

(a) Community college districts may borrow funds from federal or state regulated financial institutions for the purposes of design and construction costs associated with retrofitting buildings to become more energy efficient. Community college districts shall only be authorized to borrow an amount which does not exceed that which can be repaid from energy cost avoidance savings accumulated from the improvement of school facilities.

(b) Any savings and loan association may make loans or advances of credit pursuant to the provisions of subdivision (a) in an amount not in excess of 5 percent of its total assets. This investment may be in addition to any other investment savings and loan associations are permitted to undertake under the provisions of section 6705.7 of the Financial Code.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57062. Pre–Audits and Post–Audits for Buildings.

To the extent that these services are available, community college districts shall arrange for the pre–audit and post–audit of buildings by investor–owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions. The pre–audit shall identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings. The post–audit shall be conducted upon completion of the retrofitting of the buildings to insure that the project satisfies the recommendations of the pre–audit.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57063. Contracts.

Community college districts taking action under this article shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to community college districts by investor–owned or municipal utility companies or federal or state regulated financial institutions, community college districts may utilize the services of these businesses.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 2. Environmental Quality

§ 57100. General.

(a) The regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (division 13 commencing with section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code.

(b) The purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of community college construction projects.

(c) It is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in division 6, title 14, California Administrative Code, section 15000 et seq.

NOTE: Authority cited: Sections 66700 and 70901, Education Code, and Section 21082, Public Resources Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. New chapter 2 (sections 57100 through 57140, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of article 1 heading and amendment of section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57101. Purpose.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57120. Basic Guidelines.

HISTORY

1. Repealer of Article 2 heading and Section 57120 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57121. Application.

(a) When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (section 15080, title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long–range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) The Chancellor shall require that an Initial Study, pursuant to section 15080, title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information.

(d) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (section 15023, title 14, California Administrative Code); Negative Declaration (section 15083, Title 14, California Administrative Code); or Notice of Completion (section 15085(c), title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57140. Procedures.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Section 71091, Education Code; Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of article 3 heading and new NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repeal of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 3. District Funded Construction Projects

§ 57150. Purpose.

The purpose of these regulations is to provide basic definitions, principles, and standards for use by the Chancellor of the California Community Colleges in considering any district–funded construction project subject to the requirements of section 81837 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. New chapter 3 (sections 57150–57158, not consecutive) filed 10–30–80; effective thirtieth day thereafter (Register 80, No. 44).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57152. Definitions.

(a) "Capital Outlay Project" includes purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing.

(b) "Construction Project" includes new construction, alteration, and extension or betterment of existing structures.

(c) "State–Funded Project" means a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code, and for which a district requests or receives State funding assistance.

(d) "District–Funded Project" means a capital outlay project subject to the provisions of section 81837 of the Education Code for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility.

(e) "Five–Year Construction Plans" means a plan for capital construction for community college purposes of a community college district for the five–year period commencing with the next proposed year of funding.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57154. Application.

In each case, the application for approval of plans for a district–funded project shall be accompanied by the plans and full, complete and accurate take–off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57156. Review.

The review and evaluation of plans for a district–funded project by the Chancellor, shall include the following elements:

(a) Review and evaluate each district–funded project with reference to the elements of the capital construction program specified in Education Code section 81821.

(b) The review and evaluation shall be directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plans and where applicable, the standards as adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 57158. Chancellor's Response to Request for Approval of Plans.

(a) When analysis by the Chancellor shows that approval of the plans for a proposed locally–funded construction of a community college facility would not result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall approve the plans.

(b) When analysis by the Chancellor shows that approval of the plans would result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall respond by:

(1) Imposing conditions for the approval of the plans; or

(2) Finding that despite the substantial variance with space standards, the plans, as submitted, are acceptable, and responding to the district with:

(A) Cautions, and/or

(B) Appraisal of the potential consequences of this variance.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment of subsection (b) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Subchapter 4. Deferred Maintenance

§ 57200. Purpose.

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code section 84660, the provisions of this chapter shall apply.

ifornia Administrative Code, and the California Fair Employment Practices Act, as amended.

§ 13044. Waivers.

Applicant districts may apply to the State Board of Education for waivers from provisions of the California Education Code under the provisions of Education Code Sections 52000 with respect to early childhood education schools and 58603 with respect to ESEA Title I schools if the granting of such waivers (which are not inconsistent with federal statutes or regulations) will aid such applicant districts in the establishment and operation of early childhood education programs or compensatory education programs for low income children.

History

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

Subchapter 11. School Housing Aid for Compensatory Education

(Education Code Sections 16210–16215)

Article 1. General Provisions

§ 13050. Application for Funds.

An applicant for school housing aid pursuant to Education Code Sections 16210–16215 shall be identified as a "most concentrated area of poverty and social tension" described in Section 12051 or a "designated area of disadvantage" described in Education Code Section 58600.

Note: Authority cited for Chapter 11: Section 16213, Education Code.

History

1. New Chapter 11 (§§ 13050 through 13053) filed 1–14–70; effective thirtieth day thereafter (Register 70, No. 3).
2. Amendment of section and NOTE filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 13051. Priorities to Districts Reducing Teacher–Pupil Ratio.

Priorities in grants and allocations pursuant to Article 4 of Chapter 8 of Part 10 of the Education Code shall be granted to districts for use in areas designated as the most concentrated areas of poverty and social tension in the State when the district has reduced, or submitted an approvable plan for reducing, the number of pupils to full–time equivalent classroom teachers in grades kindergarten through six, inclusive, in those schools to a ratio of not more than 25–1.

History

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 13052. Basis of Priorities.

Priorities for purposes of grants and allocations pursuant to Article 4 of Chapter 8 of Part 10 of the Education Code shall be based upon needs and the urgency thereof, of school districts as determined by the following factors:

(a) Justification of the need for new school plants, new classrooms, acquisition of land, sites for new classrooms, or remodeling, renovation or reconstruction of existing school buildings or facilities.

(b) The number of available unused or partially used classrooms in the designated area.

(c) The number of available unused or partially used classrooms outside of the designated area which may be used reasonably to accommodate pupils from the designated area.

(d) The joint recommendation of the Bureau of School Facilities Planning and the Bureau of Intergroup Relations of the Department of Education of district plans for new school plants, acquisition of land, sites for new classrooms, for construction of new facilities, or for remodeling, renovation, or reconstruction of existing school buildings or facilities.

(e) Availability of the district's uncommitted capital outlay funds for school housing to meet the needs of the district's plan for compensatory education.

History

1. Amendment of subsection (d) filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

§ 13053. Computation of Entitlements.

Entitlements for school housing aid shall be computed on the basis of public school population ratios determined in accordance with Education Code Section 54483. The Director, with the approval of the State Board of Education, may modify entitlements when required by the comparative needs, and the urgency thereof, of school districts.

History

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

Subchapter 12. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

History

1. New Chapter 12 (Section 13070) filed 1–14–70; effective thirtieth day thereafter (Register 70, No. 3).
2. Repealer of Chapter 12 (Section 13070) filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).

Chapter 13. School Facilities and Equipment

Subchapter 1. School Housing

Article 1. General Standards

§ 14000. Policy Declaration.

Note: Authority cited for Article 1: Sections 39000, 39100, 39101 and 39118, Education Code.

History

1. New chapter 1 (§§ 14000, 14001, 14010, 14020, 14021, 14030 through 14033, 14040 through 14045) filed 1–14–70; effective thirtieth day thereafter. Approved nunc pro tunc by State Building Standards Commission as to any building standards involved (Register 70, No. 3).
2. Amendment of section and Note filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).
3. Repealer filed 11–12–93; operative 12–13–93 (Register 93, No. 46).

§ 14001. Minimum Standards.

Educational facilities planned by school districts shall be:

(a) Evolved from a statement of educational program requirements which reflects the school district's educational goals and objectives.

(b) Master–planned to provide for maximum site enrollment.

(c) Located on a site which meets California Department of Education standards as specified in Section 14010.

(d) Designed for the environmental comfort and work efficiency of the occupants.

(e) Designed to require a practical minimum of maintenance.

(f) Designed to meet federal, state, and local statutory requirements for structure, fire, and public safety.

(g) Designed and engineered with flexibility to accommodate future needs.

Note: Authority cited: Section 39101(b), Education Code. Reference: Section 17717.5, Education Code.

History

1. Amendment filed 9–23–77; effective thirtieth day thereafter (Register 77, No. 39).
2. Amendment of text and adoption of Note filed 11–12–93; operative 12–13–93 (Register 93, No. 46).

Article 2. School Sites

§ 14010. Standards for School Site Selection.

All districts shall select a school site that provides safety and that supports learning. The following standards shall apply:

(a) The acreage and enrollment for a new school site shall be consistent with the numbers of acres and enrollment established on pages 14–20 of the 1966 Edition, "School Site Analysis and Development" published by the California State Department of Education as last amended in 1987 and incorporated into this section by reference, in toto, unless sufficient land is not available or circumstances exist due to any of the following:

(1) Urban or suburban development results in insufficient available land even after considering the option of eminent domain.

(2) Sufficient acreage is available but it would not be economically feasible to mitigate geological or environmental hazards or other site complications which pose a threat to the health and/or safety of students and staff.

(3) Sufficient acreage is available but not within the attendance area of the unhoused students or there is an extreme density of population within a given attendance area requiring a school to serve more students on a single site. Choosing an alternate site would result in extensive long–term bussing of students that would cause extreme financial hardship to the district to transport students to the proposed school site.

(4) Geographic barriers, traffic congestion, or other constraints would cause extreme financial hardship for the district to transport students to the proposed school site.

(b) If a school site is less than the recommended acreage required in subsection (a) of this section, the district shall demonstrate how the students will be provided an adequate educational program including physical education as described in the district's adopted course of study.

(c) The property line of the site even if it is a joint use agreement as described in subsection (o) of this section shall be at least the following distance from the edge of respective power line easements:

(1) 100 feet for 50–133 KV line.

(2) 150 feet for 220–230 KV line.

(3) 350 feet for 500–550 KV line.

(d) The site shall be a sufficient distance from a railroad track easement, as ascertained by an analysis of the cargo, speed, grade, curves, and/or type of track (mainline or spur) to determine that it poses no personal injury or property damage risk on the school site in the event of a derailment or other disaster.

(e) The site shall not be adjacent to a road or freeway that any site–related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program.

(f) The site shall not contain an active earthquake fault or fault trace.

(g) The site is not within an area of flood or dam flood inundation unless the cost of mitigating the flood or inundation impact is reasonable.

(h) The site shall not be located near an above–ground water or fuel storage tank that can pose a safety hazard as determined by a risk analysis study.

(i) The site is not subject to moderate to high liquefaction or landslides.

(j) The shape of the site shall have a proportionate length to width ratio to accommodate the building layout, parking and playfields that can be safely supervised and does not exceed the allowed passing time to classes for the district.

(k) The site shall be easily accessible from arterial roads and shall allow minimum peripheral visibility from the planned driveways in accordance with the Sight Distance Standards established in the "Highway Design Manual," Table 201.1, published by the Department of Transportation, July 1, 1990 edition, and incorporated into this section by reference, in toto.

(l) The site shall not be on major arterial streets with a heavy traffic pattern as determined by site–related traffic studies including those that require student crossings unless mitigation of traffic hazards and a plan for the safe arrival and departure of students appropriate to the grade level has been provided by city, county or other public agency in accordance with the "School Area Pedestrian Safety" manual published by the California Department of Transportation, 1987 edition, incorporated into this section by reference, in toto.

(m) Existing or proposed zoning of the surrounding properties shall be compatible with schools in that it would not pose a potential health or safety risk to students or staff in accordance with Education Code Section 39003 and Government Code Section 65402 and available studies of traffic surrounding the site.

(n) The site shall be located within the proposed attendance area to encourage student walking and avoid extensive bussing unless bussing is used to promote ethnic diversity.

(o) The site shall be selected to promote joint use of parks, libraries, museums and other public services, the acreage of which may be included as part of the recommended acreage as stated in subsection (a) of this section.

(p) The site shall be conveniently located for public services including but not limited to fire protection, police protection, public transit and trash disposal whenever feasible.

(q) The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process.

(r) Easements on or adjacent to the site shall not restrict access or building placement.

(s) The cost and complications of the following shall be considered in the site selection process and should not result in undue delays or unreasonable costs consistent with State Allocation Board standards:

(1) Distance of utilities to the site, availability and affordability of bringing utilities to the site.

(2) Site preparation including grading, drainage, demolition, hazardous cleanup, including cleanup of indigenous material such as serpentine rock, and off–site development of streets, curbs, gutters and lights.

(3) Eminent domain, relocation costs, severance damage, title clearance and legal fees.

(4) Long–term high landscaping or maintenance costs.

(5) Existence of any wildlife habitat that is on a protected or endangered species list maintained by any state or federal agency, existence of any wetlands, natural waterways, or areas that may support migratory species, or evidence of any environmentally sensitive vegetation.

(t) At the request of the governing board of a school district, the State Superintendent of Public Instruction may grant exemptions to any of the standards in this section if the district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment.

NOTE: Authority cited: Section 39101(b), Education Code. Reference: Sections 39002, 39003, 39101(a), and 39101(f), Education Code; Section 65402, Government Code; Sections 21372, 22350, 22352, 22358.4, and 22358.5, Vehicle Code.

HISTORY

1. Renumbering of former section 14010 to section 14011 and new section filed 11–12–93; operative 12–13–93 (Register 93, No. 46). For prior history, see Register 77, No. 39.

§ 14011. Procedures for Site Acquisition – Non–Self–Certified Districts.

A non–self–certified district is defined as a district having a project that is more than 50 percent state funded under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code and has not received designation from the Office of Local Assistance as a self–certified district. A non–self–certified district, before acquiring title to real property for school use, shall obtain written approval from the California Department of Education using the following procedures:

(a) Request a preliminary conference with a consultant from the School Facilities Planning Division and in consultation review and evaluate sites under final consideration.

(b) Contact the School Facilities Planning Division of the California Department of Education to obtain a "School Facilities Planning Division

Field Site Review", form SFPD 4.0, published by the California State Department of Education, as last amended in January, 1990 and incorporated into this section by reference, in toto, which lists the site options in order of merit according to the site selection standards delineated in Section 14010.

(c) Prepare a statement of policies as delineated on the "School Facilities Planning Division School Site Report," form SFPD 4.02, as last amended in January 1990 and incorporated into this section by reference, in toto, covering the range and organization of grades to be served, the transportation of pupils, and the ultimate maximum pupil enrollment to be housed on the site.

(d) Prepare maps showing present and proposed school sites, significant roads or highways, unsanitary or hazardous installations, such as airports or industries and the indicated boundary of the pupil attendance area to be served as delineated on form SFPD 4.02.

(e) Meet with appropriate local government, recreation, and park authorities to consider possible joint use of the grounds and buildings and to coordinate the design to benefit the intended users as required by Education Code Section 35275.

(f) Give written notice to the local planning agency having jurisdiction to review the proposed school site or addition to an existing school site and request a written report from the local planning agency of the investigations and recommendations for each proposed site with respect to conformity with the adopted general plan as required by Public Resources Code Section 21151.2 and Government Code Section 65402.

(g) Comply with Education Code Sections 39002 and 39002.5, with particular emphasis upon an engineering investigation made of the site to preclude locating the school on terrain that may be potentially hazardous:

(1) The geological and soils engineering study shall address all of the following:

(A) Nature of the site including a discussion of liquefaction, subsidence or expansive soils, slope, stability, dam or flood inundation and street flooding.

(B) Whether the site is located within a special study zone as defined in Education Code Section 39002.

(C) Potential for earthquake or other geological hazard damage.

(D) Whether the site is situated on or near a pressure ridge, geological fault or fault trace that may rupture during the life of the school building and the student risk factor.

(E) Economic feasibility of the construction effort to make the school building safe for occupancy.

(2) Other studies shall include the following:

(A) Population trends

(B) Transportation

(C) Water supply

(D) Waste disposal facilities

(E) Utilities

(F) Traffic hazards

(G) Surface drainage conditions

(H) Other factors affecting initial and operating costs.

(h) Prepare an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000). As required by Education Code Section 39003, the written findings of the environmental impact report or negative declaration must include a statement verifying that the site to be acquired for school purposes is not currently or formerly a hazardous, acutely hazardous substance release, or solid waste disposal site or, if so, that the wastes have been removed. Also, the written findings must state that the site does not contain pipelines which carry hazardous wastes or substances other than a natural gas supply line to that school or neighborhood. If hazardous air emissions are identified, the written findings must state that the health risks do not and will not constitute an actual or potential danger of public health of students or staff. If corrective measures of chronic or accidental hazardous air emissions are required under an existing order by another jurisdiction, the governing board shall make a finding that the emissions have been mitigated prior to occupancy of the school.

(i) Consult with, or demonstrate that the lead agency, if other than the district preparing the environmental impact report or negative declaration, has consulted with the appropriate city/county agency and with any air pollution control district or air quality management district having jurisdiction, concerning any facilities having hazardous or acutely hazardous air emissions within one–fourth of a mile of the proposed school site as required by Education Code Section 39003.

(j) Follow the recommendations of the Department of Transportation, Division of Aeronautics, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Sections 39005 through 39007.

(k) Follow the standards for school site selection in Section 14010 of this article.

(l) Conduct a public hearing by the governing board of the school district as required in Education Code Section 39001 to evaluate the property using the standards described in Section 14010 of this article. The district's facility advisory committee may provide an evaluation of the proposed site to the governing board.

(m) Submit the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education.

NOTE: Authority cited: Section 39101(b), Education Code. Reference: Sections 17706, 17724, 39001, 39002, 39002.5, 39003, 39005, 39006, 39007, 35275, and 39101(b), Education Code; Sections 2621 et. seq., 21000 et. seq., 21151.2, 21151.8, and 21152.3, Public Resources Code; Section 65402, Government Code.

HISTORY

1. Renumbering and amendment of section 14010 to section 14011 and adoption of NOTE filed 11–12–93; operative 12–13–93 (Register 93, No. 46).

§ 14012. Procedures for Site Acquisition – Self–Certified Districts.

(a) Districts with self–certified projects as defined in Education Code Section 17706(c) shall certify to the California Department of Education that the proposed site complies with the site selection standards in Section 14010. A self–certified district is one which has requested and received designation from the Office of Local Assistance as a self–certified district.

(b) Districts with self–certified projects need not submit items (c) through (l) in Section 14011 but shall maintain the records for the purposes of an audit in accordance with Education Code Section 17724(c).

(c) Self–certified districts shall be subject to random audits of the information contained in Section 14010 and Section 14011(c) through (l) of this article. The California Department of Education shall notify the State Allocation Board of any material inaccuracies or misrepresentation from the standards for site selection in Section 14010.

(d) In the event of receiving a complaint of noncompliance with the site selection standards in Section 14010, the California Department of Education shall notify the governing board of the school district in writing of the nature of the complaint. The self–certified district shall make available for review and investigation by the California Department of Education the documents used in their site selection process. After notification of the results of the complaint investigation by the California Department of Education, the district shall comply with the requirements of Education Code Section 39101(b).

(e) Self–certified districts may request advice from the California Department of Education as described in Education Code Section 39101(a).

(f) Self–certified districts shall prepare documentation of and retain for purposes of an audit in accordance with Education Code Section 17724(c) the exemption from any standard in Section 14010 of this article with a description of the mitigation that overrides the standard. Self–certified districts may request from the California Department of Education a review of the adequacy of the mitigation measure.

NOTE: Authority cited: Sections 17724(b) and 39101(b), Education Code. Reference: Sections 17706(c), 17724(c), 17724(d) and 39101(a), Education Code.

HISTORY

1. New section filed 11-12-93; operative 12-13-93 (Register 93, No. 46).

§ 14013. Procedures for Site Acquisition – Locally-Funded Districts.

A locally-funded district is defined as a district with a project not applying for funding from any state program administered by the State Allocation Board as defined in Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code. A locally-funded district, before acquiring title to real property for school use, shall:

(a) Evaluate the property using the standards established in Section 14010 and items (e) through (*l*) in Section 14011;

(b) Comply with terms of the complaint investigation described in Section 14012(d); and

(c) May request advice from the California Department of Education as described in Education Code Section 39101(a).

(d) Prepare documentation of and retain for purposes of a complaint investigation the exemption from the standard in Section 14010 of this article with a description of the mitigation that overrides the standard. Locally-funded districts may request from the California Department of Education a review of the adequacy of the mitigation measure.

NOTE: Authority cited: Section 39001(b), Education Code. Reference: Sections 17700 et. seq., 39101(a), and 39101(b), Education Code.

HISTORY

1. New section filed 11-12-93; operative 12-13-93 (Register 93, No. 46).

Article 3. Attendance Areas and Practices

HISTORY

1. Repealer of Article 3 (Sections 14020-14021) filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history, see Register 70, No. 11; Register 70, No. 26 and Register 71, No. 1.

Article 4. Standards, Planning and Approval of School Facilities

§ 14030. Standards for Development of Plans for the Design and Construction of School Facilities.

The following standards for new schools are for the use of all school districts for the purposes of educational appropriateness and promotion of school safety:

(a) Educational Specifications.

Educational specifications for school design shall be prepared based on the district's goals, objectives, policies and community input that determine the educational program and define the following:

(1) Enrollment of the school and the grade level configuration.

(2) Emphasis in curriculum content or teaching methodology that influences school design.

(3) Type, number, size, function, special characteristics of each space, and spatial relationships of the instructional area that are consistent with the educational program.

(4) Community functions that may affect the school design.

(b) Site Layout.

Parent drop off, bus loading areas, and staff parking shall be separated to allow students to enter and exit the school grounds safely unless these features are unavailable due to limited acreage in urban areas or restrictive locations, specifically:

(1) Buses do not pass through staff parking areas to enter or exit school site unless a barrier is provided that prevents vehicles from backing directly into the bus loading area.

(2) Parent drop off area is adjacent to school entrance and separate from bus area and staff parking.

(3) Vehicle traffic pattern does not interfere with foot traffic patterns. Foot traffic does not have to pass through entrance driveways to enter school. Crosswalks are clearly marked to define desired foot path to school entrance.

(4) Parking stalls are not located so vehicles must back into bus or loading areas used by parents. Island fencing or curbs are used to separate parking areas from loading/unloading areas.

(5) To provide equal access to insure the purposes of the least restrictive environment, bus drop off for handicapped students is in the same location as for regular education students.

(c) Playground and Field Areas.

Adequate physical education teaching stations shall be available to accommodate course requirements for the planned enrollment, specifically:

(1) A variety of physical education teaching stations are available to provide a comprehensive physical education program in accordance with the district's adopted course of study (including hardcourt, field area and indoor spaces).

(2) The physical education teaching stations are adequate for the planned student enrollment to complete the minimum instruction and course work defined in Education Code Sections 51210(g), 51220(d) and 51225.3(a)(1)(F).

(3) Supervision of playfields is not obstructed by buildings or objects that impair observation.

(4) Joint use for educational purposes with other public agencies is explored. Joint use layout with parks is not duplicative and fulfills both agencies' needs.

(d) Delivery and Utility Areas.

Delivery and service areas shall be located to provide vehicular access that does not jeopardize the safety of students and staff:

(1) Delivery/utility vehicles have direct access from the street to the delivery area without crossing over playground or field areas or interfering with bus or parent loading unless a fence or other barrier protects students from large vehicle traffic on playgrounds.

(2) Trash pickup is fenced or otherwise isolated and away from foot traffic areas.

(e) Future Expansion.

Site layouts shall have capability for expansion without substantial alterations to existing structures or playgrounds:

(1) Site layout designates area(s) for future permanent or temporary additions that are compatible with the existing site plans for playground layout and supervision.

(2) Utilities to the expansion area are included in the plans and have the capacity to accommodate anticipated growth.

(3) Exits, corridors, stairs, and elevators are located to accommodate capacity of additions, particularly in such buildings added as the multi-purpose/cafeteria, administration, gymnasium/or auditorium.

(f) Placement of Buildings.

Building placement shall consider compatibility of the various functions on campus and provide optimum patterns of foot traffic flow around and within buildings. Site layout of buildings, parking, driveways, and physical education areas shall be adequate to meet the instructional, security and service needs of the educational program:

(1) Building placement is compatible with other functions on campus; e.g., band room is not next to library.

(2) Physical relationship of classrooms, auxiliary, and support areas allows unobstructed movement of staff and students around the campus.

(3) Building placement has favorable orientation to wind, sun, rain, and natural light.

(4) Restrooms are conveniently located, require minimum supervision, and, to the extent possible, are easily accessible from playground and classrooms.

(5) Parking spaces are sufficient for staff, visitors, and students (where applicable).

(6) The campus is secured by fencing and electronic devices such as code entries, electronic monitoring or motion sensors when needed.

(g) Classrooms.

History
1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

§ 57055. Developmental Progression of Energy Conservation Related Capital Outlay Projects.

(a) Energy conservation related projects shall be evaluated and ranked for approval by the Chancellor following the existing procedures for the statewide capital outlay program.

(b) Upon securing approval of a proposed energy conservation project by all appropriate review agencies, the governing board of a community college may submit to the Chancellor for approval, or disapproval, preliminary plans for the project.

(c) Preliminary plans for energy related projects shall include:

(1) The results of a technical audit (TA) performed by an authorized Technical Auditor which describes in detail the energy conservation measures the project is to institute.

(2) The status of the project as related to the various federal and state aided programs for energy conservation.

(3) An architectural and/or engineering analysis setting forth the detailed costs of the various elements of the project.

Note: Authority cited: Sections 66700, 70901, and 81805, Education Code. Reference: Sections 70901, and 81800–81839, Education Code.

History
1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

§ 57060. Legislative Findings, Declarations and Intent; Energy Conservation.

The Board of Governors finds and declares that it is in the interest of the state and of the people thereof for the state to aid community college districts in finding cost–effective methods of conserving energy in buildings maintained by the districts. The Board of Governors also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of district buildings, that the costs involved in improving existing facilities to become more energy efficient are often prohibitive.

It is the intent of the Board of Governors in adopting this regulation to encourage community college districts to retrofit buildings so as to conserve energy and reduce the costs of supplying energy.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

§ 57061. Community College Districts, Borrowing; Retrofitting Buildings for Energy Conservation; Savings and Loan Investment.

(a) Community college districts may borrow funds from federal or state regulated financial institutions for the purposes of design and construction costs associated with retrofitting buildings to become more energy efficient. Community college districts shall only be authorized to borrow an amount which does not exceed that which can be repaid from energy cost avoidance savings accumulated from the improvement of school facilities.

(b) Any savings and loan association may make loans or advances of credit pursuant to the provisions of subdivision (a) in an amount not in excess of 5 percent of its total assets. This investment may be in addition to any other investment savings and loan associations are permitted to undertake under the provisions of section 6705.7 of the Financial Code.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

§ 57062. Pre–Audits and Post–Audits for Buildings.

To the extent that these services are available, community college districts shall arrange for the pre–audit and post–audit of buildings by investor–owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions. The pre–audit shall identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings. The post–audit shall be conducted upon completion of the retrofitting of the buildings to insure that the project satisfies the recommendations of the pre–audit.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

§ 57063. Contracts.

Community college districts taking action under this article shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to community college districts by investor–owned or municipal utility companies or federal or state regulated financial institutions, community college districts may utilize the services of these businesses.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

History
1. New section filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of History 1 (Register 95, No. 23).

Subchapter 2. Environmental Quality

§ 57100. General.

(a) The regulations adopted under this Chapter are pursuant to the California Environmental Quality Act of 1970 (division 13 commencing with section 21000 of the Public Resources Code) and Guidelines adopted by Secretary for Resources in Division 6, Title 14, California Administrative Code.

(b) The purpose of these regulations is to provide basic principles, objectives, criteria and definitions for use by the Chancellor of the California Community Colleges in reviews required by the Education Code of community college construction projects.

(c) It is the intent of the Board of Governors to adopt in substance the Guidelines adopted by the Secretary for Resources in division 6, title 14, California Administrative Code, section 15000 et seq.

Note: Authority cited: Sections 66700 and 70901, Education Code, and Section 21082, Public Resources Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

History
1. New chapter 2 (sections 57100 through 57140, not consecutive) filed 4–26–74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of NOTE filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of article 1 heading and amendment of section filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

5. Editorial correction of HISTORY 4 (Register 95, No. 23).

§ 57101. Purpose.

HISTORY

1. Repealer filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57120. Basic Guidelines.

HISTORY

1. Repealer of Article 2 heading and Section 57120 filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).

§ 57121. Application.

(a) When reviewing proposals from Community College districts for acquisition of land to be used as a site for college facilities, the Chancellor shall also review the Community College district's Initial Study (section 15080, title 14, California Administrative Code) of the development intended on the land and include the result of this review in a site review report.

(b) The Chancellor shall require that proposals for initial construction of facilities for a new campus be accompanied by a long–range plan for physical development approved by the district governing board which shows the intended use of all portions of the land and approximate location of buildings and facilities.

(c) The Chancellor shall require that an Initial Study, pursuant to section 15080, title 14, California Administrative Code, be submitted to the Chancellor's office concurrent with other required information.

(d) The Chancellor shall require that a copy of the (1) finding of Categorical Exemption (section 15023, title 14, California Administrative Code); Negative Declaration (section 15083, Title 14, California Administrative Code); or Notice of Completion (section 15085(c), title 14, California Administrative Code), whichever is appropriate, be submitted to his office concurrently with preliminary plans.

(e) The Chancellor shall require a copy of the findings of Categorical Exemption or Notice of Determination (section 15085(g), Title 14, California Administrative Code), whichever is appropriate, be submitted to the Chancellor's office concurrently with plans submitted for approval in accordance with section 81837 of the Education Code.

(f) The Chancellor shall withhold authorization of the use of state funds for construction until requirements of the California Environmental Quality Act of 1970 have been met.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 23).

§ 57140. Procedures.

NOTE: Authority cited: Sections 71020 and 71062, Education Code. Reference: Section 71091, Education Code; Division 13 (commencing with Section 21000), Public Resources Code.

HISTORY

1. Amendment filed 11–4–77; effective thirtieth day thereafter (Register 77, No. 45).
2. Repealer of article 3 heading and new NOTE filed 4–27–83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Editorial correction of HISTORY 3 (Register 95, No. 23).

Subchapter 3. District Funded Construction Projects

§ 57150. Purpose.

The purpose of these regulations is to provide basic definitions, principles, and standards for use by the Chancellor of the California Community Colleges in considering any district–funded construction project subject to the requirements of section 81837 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. New chapter 3 (sections 57150–57158, not consecutive) filed 10–30–80; effective thirtieth day thereafter (Register 80, No. 44).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 57152. Definitions.

(a) "Capital Outlay Project" includes purchase of land and costs related thereto, including court costs, condemnation costs, legal fees, title fees, etc.; construction projects, including working drawings; and equipment related to a construction project regardless of cost or timing.

(b) "Construction Project" includes new construction, alteration, and extension or betterment of existing structures.

(c) "State–Funded Project" means a capital outlay project qualifying as a project pursuant to section 81805 of the Education Code, and for which a district requests or receives State funding assistance.

(d) "District–Funded Project" means a capital outlay project subject to the provisions of section 81837 of the Education Code for which any funds, other than state funds, are paid or to be paid for erecting, adding to, or altering any community college facility.

(e) "Five–Year Construction Plans" means a plan for capital construction for community college purposes of a community college district for the five–year period commencing with the next proposed year of funding.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57154. Application.

In each case, the application for approval of plans for a district–funded project shall be accompanied by the plans and full, complete and accurate take–off of assignable and gross square feet of space, which shall comply with any and all requirements prescribed by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57156. Review.

The review and evaluation of plans for a district–funded project by the Chancellor, shall include the following elements:

(a) Review and evaluate each district–funded project with reference to the elements of the capital construction program specified in Education Code section 81821.

(b) The review and evaluation shall be directed particularly to ascertain whether the locally funded project is of appropriate size, is appropriately timed and is justified in terms of the elements of the capital construction plans and where applicable, the standards as adopted by the Board of Governors.

NOTE: Authority cited: Sections 66700, 70901, and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57158. Chancellor's Response to Request for Approval of Plans.

(a) When analysis by the Chancellor shows that approval of the plans for a proposed locally–funded construction of a community college facility would not result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall approve the plans.

(b) When analysis by the Chancellor shows that approval of the plans would result in facilities which would be substantially at variance with space and utilization standards adopted by the Board of Governors, the Chancellor shall respond by:

(1) Imposing conditions for the approval of the plans; or

(2) Finding that despite the substantial variance with space standards, the plans, as submitted, are acceptable, and responding to the district with:

(A) Cautions, and/or

(B) Appraisal of the potential consequences of this variance.

NOTE: Authority cited: Sections 66700, 70901 and 81836, Education Code. Reference: Sections 81836 and 81837, Education Code.

HISTORY

1. Amendment of subsection (b) filed 1–16–81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

Subchapter 4. Deferred Maintenance

§ 57200. Purpose.

For the purposes of administration and implementation of the Community Colleges Facility Deferred Maintenance and Special Repair Program as required by Education Code section 84660, the provisions of this chapter shall apply.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. New chapter 4 (sections 57200–57205) filed 7–8–82; effective thirtieth day thereafter (Register 82, No. 28).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 57201. General Requirements.

Each community college district applying to receive funds pursuant to this chapter shall:

(a) Prepare and submit to the Chancellor a current five–year maintenance plan. The plan shall be consistent with the district's five–year capital outlay plan, but shall not duplicate that plan. The plan shall provide for ongoing as well as deferred maintenance.

(b) Maintain a level of ongoing maintenance during the year for which funds are requested commensurate with the level of activity in prior years.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57202. Application for Funds.

Districts shall apply to the Chancellor's Office for funding for deferred maintenance in the form and manner specified by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57203. Allocation of Funds.

The Chancellor shall allocate the funds appropriated by the Legislature as soon as such funds are available, and in accordance with the project priorities established, provided that ten percent (10%) of the funds may be held for contingencies that may occur during the year. Any such funds initially held for contingencies shall be allocated prior to the end of the fiscal year.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57204. Selection of Projects.

The Chancellor shall evaluate district applications and rank projects for funding. Projects shall be ranked for funding using the following criteria, which shall be ranked equally:

(a) Health and Safety. Priority shall be given to projects necessary to meet safety requirements and to correct hazardous conditions which, if uncorrected, would result in facility closure or danger to staff and students utilizing the facility.

(b) Prevention of Further More Costly Repairs. Priority shall be given to deferred maintenance for instructional facilities necessary to prevent substantially increased maintenance or replacement costs in the future.

(c) Disruption of Programs. Priority shall be given to projects necessary to prevent disruption of instructional programs.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 57205. District Match.

The Chancellor will allocate funds for only fifty percent of the costs for a deferred maintenance project. In accepting funds under this chapter, a district agrees to spend district funds necessary to complete the project.

The Chancellor may waive this requirement in whole or in part for projects for which the district demonstrates that it cannot make available fifty percent of the costs for the project from other sources.

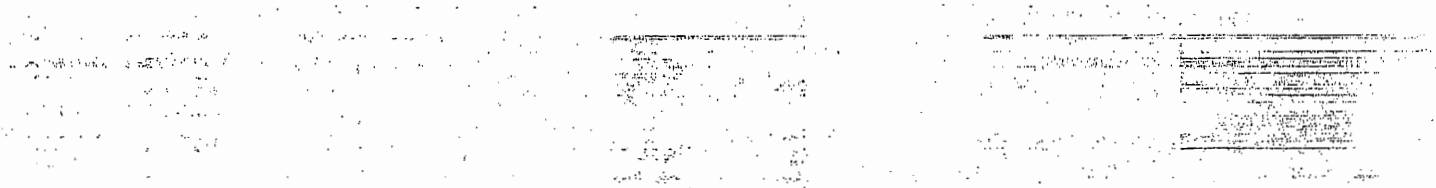
The Chancellor shall waive this requirement only for projects with high priority for funding. Highest priority shall be given to those projects which the Chancellor determines are necessary to prevent a facility from being closed.

Where projects would otherwise be of equal rank, first priority shall be given to those projects for which the district provides matching funds.

NOTE: Authority cited: Sections 66700, 70901 and 84660, Education Code. Reference: Section 84660, Education Code.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).



ifornia Administrative Code, and the California Fair Employment Prac- Act, as amended.

3044. Waivers.

Applicant districts may apply to the State Board of Education for waivers from provisions of the California Education Code under the provisions of Education Code Sections 52000 with respect to early childhood education schools and 58603 with respect to ESEA Title I schools if the granting of such waivers (which are not inconsistent with federal statutes or regulations) will aid such applicant districts in the establishment and operation of early childhood education programs or compensatory education programs for low income children.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Subchapter 11. School Housing Aid for Compensatory Education

(Education Code Sections 16210-16215)

Article 1. General Provisions

§ 13050. Application for Funds.

An applicant for school housing aid pursuant to Education Code Sections 16210-16215 shall be identified as a "most concentrated area of poverty and social tension" described in Section 12051 or a "designated area of disadvantage" described in Education Code Section 58600.

NOTE: Authority cited for Chapter 11 Section 16213, Education Code.

HISTORY

Chapter 11 (§§ 13050 through 13053) filed 1-14-70; effective thirtieth day eafter (Register 70, No. 3).

nendment of section and NOTE filed 9-23-77; effective thirtieth day thereaf- r (Register 77, No. 39).

§ 13051. Priorities to Districts Reducing Teacher-Pupil Ratio.

Priorities in grants and allocations pursuant to Article 4 of Chapter 8 of Part 10 of the Education Code shall be granted to districts for use in areas designated as the most concentrated areas of poverty and social tension in the State when the district has reduced, or submitted an approvable plan for reducing, the number of pupils to full-time equivalent classroom teachers in grades kindergarten through six, inclusive, in those schools to a ratio of not more than 25-1.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 13052. Basis of Priorities.

Priorities for purposes of grants and allocations pursuant to Article 4 of Chapter 8 of Part 10 of the Education Code shall be based upon needs and the urgency thereof, of school districts as determined by the following factors:

(a) Justification of the need for new school plants, new classrooms, acquisition of land, sites for new classrooms, or remodeling, renovation or reconstruction of existing school buildings or facilities.

(b) The number of available unused or partially used classrooms in the designated area.

(c) The number of available unused or partially used classrooms outside of the designated area which may be used reasonably to accommodate pupils from the designated area.

The joint recommendation of the Bureau of School Facilities Plan- and the Bureau of Intergroup Relations of the Department of Educa- of district plans for new school plants, acquisition of land, sites for ...w classrooms, for construction of new facilities, or for remodeling, renovation, or reconstruction of existing school buildings or facilities.

(e) Availability of the district's uncommitted capital outlay funds for school housing to meet the needs of the district's plan for compensatory education.

HISTORY

1. Amendment of subsection (d) filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

§ 13053. Computation of Entitlements.

Entitlements for school housing aid shall be computed on the basis of public school population ratios determined in accordance with Education Code Section 54483. The Director, with the approval of the State Board of Education, may modify entitlements when required by the comparative needs, and the urgency thereof, of school districts.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Subchapter 12. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

HISTORY

1. New Chapter 12 (Section 13070) filed 1-14-70; effective thirtieth day thereafter (Register 70, No. 3).
2. Repealer of Chapter 12 (Section 13070) filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

Chapter 13. School Facilities and Equipment

Subchapter 1. School Housing

Article 1. General Standards

§ 14000. Policy Declaration.

NOTE: Authority cited for Article 1: Sections 39000, 39100, 39101 and 39118, Education Code.

HISTORY

1. New chapter 1 (§§ 14000, 14001, 14010, 14020, 14021, 14030 through 14033, 14040 through 14045) filed 1-14-70; effective thirtieth day thereafter. Approved nunc pro tunc by State Building Standards Commission as to any building standards involved (Register 70, No. 3).
2. Amendment of section and NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
3. Repealer filed 11-12-93; operative 12-13-93 (Register 93, No. 46).

§ 14001. Minimum Standards.

Educational facilities planned by school districts shall be:

(a) Evolved from a statement of educational program requirements which reflects the school district's educational goals and objectives.

(b) Master-planned to provide for maximum site enrollment.

(c) Located on a site which meets California Department of Education standards as specified in Section 14010.

(d) Designed for the environmental comfort and work efficiency of the occupants.

(e) Designed to require a practical minimum of maintenance.

(f) Designed to meet federal, state, and local statutory requirements for structure, fire, and public safety.

(g) Designed and engineered with flexibility to accommodate future needs.

NOTE: Authority cited: Sections 17251(b) and 33031, Education Code. Reference: Sections 17017.5 and 17251(b), Education Code.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. Amendment of text and adoption of NOTE filed 11-12-93; operative 12-13-93 (Register 93, No. 46).
3. Amendment of NOTE filed 10-30-2000; operative 10-30-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

Article 2. School Sites

§ 14010. Standards for School Site Selection.

All districts shall select a school site that provides safety and that supports learning. The following standards shall apply:

(a) The net usable acreage and enrollment for a new school site shall be consistent with the numbers of acres and enrollment established in the 2000 Edition, "School Site Analysis and Development" published by the California Department of Education and incorporated into this section by reference, in toto, unless sufficient land is not available or circumstances exist due to any of the following:

(1) Urban or suburban development results in insufficient available land even after considering the option of eminent domain.

(2) Sufficient acreage is available but it would not be economically feasible to mitigate geological or environmental hazards or other site complications which pose a threat to the health and/or safety of students and staff.

(3) Sufficient acreage is available but not within the attendance area of the unhoused students or there is an extreme density of population within a given attendance area requiring a school to serve more students on a single site. Choosing an alternate site would result in extensive long-term bussing of students that would cause extreme financial hardship to the district to transport students to the proposed school site.

(4) Geographic barriers, traffic congestion, or other constraints would cause extreme financial hardship for the district to transport students to the proposed school site.

(b) If a school site is less than the recommended acreage required in subsection (a) of this section, the district shall demonstrate how the students will be provided an adequate educational program including physical education as described in the district's adopted course of study.

(c) The property line of the site even if it is a joint use agreement as described in subsection (o) of this section shall be at least the following distance from the edge of respective power line easements:

(1) 100 feet for 50-133 kV line.

(2) 150 feet for 220-230 kV line.

(3) 350 feet for 500-550 kV line.

(d) If the proposed site is within 1,500 feet of a railroad track easement, a safety study shall be done by a competent professional trained in assessing cargo manifests, frequency, speed, and schedule of railroad traffic, grade, curves, type and condition of track need for sound or safety barriers, need for pedestrian and vehicle safeguards at railroad crossings, presence of high pressure gas lines near the tracks that could rupture in the event of a derailment, preparation of an evacuation plan. In addition to the analysis, possible and reasonable mitigation measures must be identified.

(e) The site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program.

(f) Pursuant to Education Code sections 17212 and 17212.5, the site shall not contain an active earthquake fault or fault trace.

(g) Pursuant to Education Code sections 17212 and 17212.5, the site is not within an area of flood or dam flood inundation unless the cost of mitigating the flood or inundation impact is reasonable.

(h) The site shall not be located near an above-ground water or fuel storage tank or within 1500 feet of the easement of an above ground or underground pipeline that can pose a safety hazard as determined by a risk analysis study, conducted by a competent professional, which may include certification from a local public utility commission.

(i) The site is not subject to moderate to high liquefaction or landslides.

(j) The shape of the site shall have a proportionate length to width ratio to accommodate the building layout, parking and playfields that can be safely supervised and does not exceed the allowed passing time to classes for the district.

(k) The site shall be easily accessible from arterial roads and shall allow minimum peripheral visibility from the planned driveways in accordance with the Sight Distance Standards established in the "Highway Design Manual," Table 201.1, published by the Department of Transportation, July 1, 1990 edition, and incorporated into this section by reference, in toto.

(l) The site shall not be on major arterial streets with a heavy traffic pattern as determined by site-related traffic studies including those that require student crossings unless mitigation of traffic hazards and a plan for the safe arrival and departure of students appropriate to the grade level has been provided by city, county or other public agency in accordance with the "School Area Pedestrian Safety" manual published by the California Department of Transportation, 1987 edition, incorporated into this section by reference, in toto.

(m) Existing or proposed zoning of the surrounding properties shall be compatible with schools in that it would not pose a potential health or safety risk to students or staff in accordance with Education Code Section 17213 and Government Code Section 65402 and available studies of traffic surrounding the site.

(n) The site shall be located within the proposed attendance area to encourage student walking and avoid extensive bussing unless bussing is used to promote ethnic diversity.

(o) The site shall be selected to promote joint use of parks, libraries, museums and other public services, the acreage of which may be included as part of the recommended acreage as stated in subsection (a) of this section.

(p) The site shall be conveniently located for public services including but not limited to fire protection, police protection, public transit and trash disposal whenever feasible.

(q) The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process.

(r) Easements on or adjacent to the site shall not restrict access or building placement.

(s) The cost and complications of the following shall be considered in the site selection process and should not result in undue delays or unreasonable costs consistent with State Allocation Board standards:

(1) Distance of utilities to the site, availability and affordability of bringing utilities to the site.

(2) Site preparation including grading, drainage, demolition, hazardous cleanup, including cleanup of indigenous material such as serpentine rock, and off-site development of streets, curbs, gutters and lights.

(3) Eminent domain, relocation costs, severance damage, title clearance and legal fees.

(4) Long-term high landscaping or maintenance costs.

(5) Existence of any wildlife habitat that is on a protected or endangered species list maintained by any state or federal agency, existence of any wetlands, natural waterways, or areas that may support migratory species, or evidence of any environmentally sensitive vegetation.

(t) If the proposed site is on or within 2,000 feet of a significant disposal of hazardous waste, the school district shall contact the Department of Toxic Substances Control for a determination of whether the property should be considered a Hazardous Waste Property or Border Zone Property.

(u) At the request of the governing board of a school district, the State Superintendent of Public Instruction may grant exemptions to any of the standards in this section if the district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment.

NOTE: Authority cited: Sections 17251(b) and 33031, Education Code. Reference: Sections 17212, 17212.5, 17213, 17251(b) and 17251(f), Education Code.

HISTORY

1. Renumbering of former section 14010 to section 14011 and new section filed 11-12-93; operative 12-13-93 (Register 93, No. 46). For prior history, see Register 77, No. 39.

2. Amendment of section and NOTE filed 10-30-2000; operative 10-30-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

§ 14011. Procedures for Site Acquisition — State-Funded School Districts.

A state-funded school district is defined as a school district having a project funded under Chapter 12.5 (commencing with Section 17070.10) of the Education Code. A state-funded school district, before acquiring title to real property for school use, shall obtain written approval from the California Department of Education using the following procedures:

(a) Request a preliminary conference with a consultant from the School Facilities Planning Division and in consultation review and evaluate sites under final consideration.

(b) Contact the School Facilities Planning Division of the California Department of Education to obtain a "School Facilities Planning Division Field Site Review," form SFPD 4.0, published by the California Department of Education, as last amended in December 1999 and incorporated into this section by reference, in toto, which lists the site options in order of merit according to the site selection standards delineated in Section 14010.

(c) Prepare a statement of policies as delineated on the "School Facilities Planning Division School Site Report," form SFPD 4.02, as last amended in December 1999 and incorporated into this section by reference, in toto, covering the range and organization of grades to be served, the transportation of pupils, and the ultimate maximum pupil enrollment to be housed on the site. Prepare a statement showing how the site is appropriate in size as justified by the school district's Facilities Master Plan, including acreage increases above the California Department of Education recommendation made to compensate for off-site mitigation. A school district may choose, in place of a master plan, a developer fee justification document or a five-year plan if it addresses enrollment projections, needed schools, and site sizes.

(d) Prepare maps showing present and proposed school sites, significant roads or highways, unsanitary or hazardous installations, such as airports or industries and the indicated boundary of the pupil attendance to be served as delineated on form SFPD 4.02.

(e) Meet with appropriate local government, recreation, and park authorities to consider possible joint use of the grounds and buildings and to coordinate the design to benefit the intended users as required by Education Code Section 35275.

(f) Give written notice to the local planning agency having jurisdiction to review the proposed school site or addition to an existing school site and request a written report from the local planning agency of the investigations and recommendations for each proposed site with respect to conformity with the adopted general plan as required by Public Resources Code Section 21151.2 and Government Code Section 65402.

(g) Comply with Education Code Sections 17212 and 17212.5, with particular emphasis upon an engineering investigation made of the site to preclude locating the school on terrain that may be potentially hazardous:

(1) The geological and soils engineering study shall address all of the following:

(A) Nature of the site including a discussion of liquefaction, subsidence or expansive soils, slope, stability, dam or flood inundation and street flooding.

(B) Whether the site is located within a special study zone as defined in Education Code Section 17212.

(C) Potential for earthquake or other geological hazard damage.

(D) Whether the site is situated on or near a pressure ridge, geological fault or fault trace that may rupture during the life of the school building and the student risk factor.

(E) Economic feasibility of the construction effort to make the school building safe for occupancy.

(2) Other studies shall include the following:

(A) Population trends

(B) Transportation

(C) Water supply

(D) Waste disposal facilities

(E) Utilities

(F) Traffic hazards

(G) Surface drainage conditions

(H) Other factors affecting initial and operating costs.

(h) Prepare an environmental impact report, or negative declaration in compliance with the Environmental Quality Act, Public Resources Code, Division 13, (commencing with Section 21000 with particular attention to Section 21151.8). As required by Education Code Section 17213, the written findings of the environmental impact report or negative declaration must include a statement verifying that the site to be acquired for school purposes is not currently or formerly a hazardous, acutely hazardous substance release, or solid waste disposal site or, if so, that the wastes have been removed. Also, the written findings must state that the site does not contain pipelines which carry hazardous wastes or substances other than a natural gas supply line to that school or neighborhood. If hazardous air emissions are identified, the written findings must state that the health risks do not and will not constitute an actual or potential danger of public health of students or staff. If corrective measures of chronic or accidental hazardous air emissions are required under an existing order by another jurisdiction, the governing board shall make a finding that the emissions have been mitigated prior to occupancy of the school.

(i) Consult with, or demonstrate that the lead agency, if other than the district preparing the environmental impact report or negative declaration, has consulted with the appropriate city/county agency and with any air pollution control district or air quality management district having jurisdiction, concerning any facilities having hazardous or acutely hazardous air emissions within one-fourth of a mile of the proposed school site as required by Education Code Section 17213.

(j) For purposes of Environmental Site Assessment, school districts shall comply with Education Code sections 17210.1, 17213.1, and 17213.2.

(k) Follow the recommendations of the State Superintendent of Public Instruction report based upon the Department of Transportation, Division of Aeronautics, findings, if the proposed site is within two miles of the center line of an airport runway or proposed runway as required by Education Code Section 17215.

(l) Follow the standards for school site selection in Section 14010 of this article.

(m) Conduct a public hearing by the governing board of the school district as required in Education Code Section 17211 to evaluate the property using the standards described in Section 14010 of this article. The school district's facility advisory committee may provide an evaluation of the proposed site to the governing board.

(n) Submit the request for exemption from a standard in Section 14010 of this article, with a description of the mitigation that overrides the standard, to the California Department of Education.

(o) Certify there are no available alternative school district-owned sites for the project deemed usable for school purposes by the California Department of Education or certify that the school district intends to sell an available alternative school district-owned site and use the proceeds from the sale for the purchase of the new school site.

NOTE: Authority cited: Sections 17251(b) and 33031, Education Code. Reference: Sections 17070.50, 17072.12, 17210.1, 17211, 17212, 17213 and 17251(b), Education Code.

HISTORY

1. Renumbering and amendment of section 14010 to section 14011 and adoption of NOTE filed 11-12-93; operative 12-13-93 (Register 93, No. 46).
2. Amendment of section heading, section and NOTE filed 10-30-2000; operative 10-30-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

§ 14012. Procedures for Site Acquisition – Locally-Funded School Districts.

A locally-funded school district is defined as a school district with a project not applying for funding from any state program administered by the State Allocation Board as defined in Chapter 12.0 (commencing with Section 17000) or Chapter 12.5 (commencing with Section 17070.10) of the Education Code. A locally-funded school district, before acquiring title to real property for school use, shall:

(a) Evaluate the property using the standards established in Section 14010 and items (e) through (l) in Section 14011;

(b) Comply with terms of the complaint investigation described in Section 14012(d); and

(c) May request advice from the California Department of Ed. ation as described in Education Code Section 17211(a).

(d) Prepare documentation of and retain for purposes of a complaint investigation the exemption from the standard in Section 14010 of this article with a description of the mitigation that overrides the standard. Locally-funded school districts may request from the California Department of Education a review of the adequacy of the mitigation measure.

(e) Comply with Education Code section 17268 regarding potential safety or health risks to students and staff.

NOTE: Authority cited: Sections 17251(b) and 33031, Education Code. Reference: Sections 17251(a) and (b) and 17268, Education Code.

HISTORY

1. New section filed 11-12-93; operative 12-13-93 (Register 93, No. 46).
2. Repealer of former section 14012 and renumbering of former section 14013 to new section 14012, including amendment of section heading, section and NOTE, filed 10-30-2000; operative 10-30-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

§ 14013. Procedures for Site Acquisition—Locally-Funded Districts.

NOTE: Authority cited: Section 39001(b), Education Code. Reference: Sections 17700 et. seq., 39101(a), and 39101(b), Education Code.

HISTORY

1. New section filed 11-12-93; operative 12-13-93 (Register 93, No. 46).
2. Renumbering of former section 14013 to section 14012 filed 10-30-2000; operative 10-30-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 44).

Article 3. Attendance Areas and Practices

HISTORY

1. Repealer of Article 3 (Sections 14020-14021) filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history, see Register 70, No. 11; Register 70, No. 26 and Register 71, No. 1.

Article 4. Standards, Planning and Approval of School Facilities

§ 14030. Standards for Development of Plans for the Design and Construction of School Facilities.

The following standards for new schools are for the use of all school districts for the purposes of educational appropriateness and promotion of school safety:

(a) Educational Specifications.

Prior to submitting preliminary plans for the design and construction of school facilities, and as a condition of final plan approval by CDE, school board-approved educational specifications for school design shall be prepared and submitted to the California Department of Education based on the school district's goals, objectives, policies and community input that determine the educational program and define the following:

(1) Enrollment of the school and the grade level configuration.

(2) Emphasis in curriculum content or teaching methodology that influences school design.

(3) Type, number, size, function, special characteristics of each space, and spatial relationships of the instructional area that are consistent with the educational program.

(4) Community functions that may affect the school design.

(b) Site Layout.

Parent drop off, bus loading areas, and parking shall be separated to allow students to enter and exit the school grounds safely unless these features are unavailable due to limited acreage in urban areas or restrictive locations, specifically:

(1) Buses do not pass through parking areas to enter or exit school site unless a barrier is provided that prevents vehicles from backing directly into the bus loading area.

(2) Parent drop off area is adjacent to school entrance and separate from bus area and staff parking.

(3) Vehicle traffic pattern does not interfere with foot traffic patterns. Foot traffic does not have to pass through entrance driveways to enter school. Crosswalks are clearly marked to define desired foot path to school entrance.

(4) Parking stalls are not located so vehicles must back into bus or loading areas used by parents. Island fencing or curbs are used to separate parking areas from loading/unloading areas.

(5) To provide equal access to insure the purposes of the least restrictive environment, bus drop off for handicapped students is in the same location as for regular education students.

(c) Playground and Field Areas.

Adequate physical education teaching stations shall be available to accommodate course requirements for the planned enrollment, specifically:

(1) A variety of physical education teaching stations are available to provide a comprehensive physical education program in accordance with the district's adopted course of study (including hardcourt, field area and indoor spaces).

(2) The physical education teaching stations are adequate for the planned student enrollment to complete the minimum instruction and course work defined in Education Code Sections 51210(g), 51220(d) and 51225.3(a)(1)(F).

(3) Supervision of playfields is not obstructed by buildings or objects that impair observation.

(4) Joint use for educational purposes with other public agencies is explored. Joint use layout with parks is not duplicative and fulfills both agencies' needs.

(d) Delivery and Utility Areas.

Delivery and service areas shall be located to provide vehicular access that does not jeopardize the safety of students and staff:

(1) Delivery/utility vehicles have direct access from the street to the delivery area without crossing over playground or field areas or interfering with bus or parent loading unless a fence or other barrier protects students from large vehicle traffic on playgrounds.

(2) Trash pickup is fenced or otherwise isolated and away from foot traffic areas.

(e) Future Expansion.

Site layouts shall have capability for expansion without substantial alterations to existing structures or playgrounds:

(1) Site layout designates area(s) for future permanent or temporary additions that are compatible with the existing site plans for playground layout and supervision.

(2) Utilities to the expansion area are included in the plans and have the capacity to accommodate anticipated growth.

(3) Exits, corridors, stairs, and elevators are located to accommodate capacity of additions, particularly in such buildings added as the multi-purpose/cafeteria, administration, gymnasium/or auditorium.

(f) Placement of Buildings.

Building placement shall consider compatibility of the various functions on campus and provide optimum patterns of foot traffic flow around and within buildings. Site layout of buildings, parking, driveways, and physical education areas shall be adequate to meet the instructional, security and service needs of the educational program:

(1) Building placement is compatible with other functions on campus: e.g., band room is not next to library.

(2) Physical relationship of classrooms, auxiliary, and support areas allows unobstructed movement of staff and students around the campus.

(3) Building placement has favorable orientation to wind, sun, rain, and natural light.

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Supplement to the:	No. CSM. 03-TC-17
Test Claim Filed September 29, 2003	California Environmental Quality Act
	History Index for Title 14, California Code of Regulations
by **Clovis Unified School District**	
	Section 15002
	Section 15004
	Section 15020
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)	

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 14, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 14, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

Register 73-06 § 15000: New Chapter 3, Articles 1 through 10 (§§ 15000-15166, not consecutive). Included for reference.

Register 73-50 § 15005: Amendment filed as an emergency. Certificate of compliance included.

§ 15012: Amendment filed as an emergency. Certificate of compliance included.

§ 15014: Amendment filed as an emergency. Certificate of compliance included.

§ 15015: New section filed as an emergency. Certificate of compliance included.

§ 15020.5: New section filed as an emergency. Certificate of compliance included.

§ 15022: Amendment filed as an emergency. Certificate of compliance included.

§ 15023: Amendment filed as an emergency. Certificate of compliance included.

§ 15025: Amendment filed as an emergency. Certificate of compliance included.

§ 15026: Amendment filed as an emergency. Certificate of compliance included.

§ 15026.5: New section filed as an emergency. Certificate of compliance included.

§ 15027: Amendment filed as an emergency. Certificate of compliance included.

§ 15029.5: New section filed as an emergency. Certificate of compliance included.

§ 15030: Amendment filed as an emergency. Certificate of compliance included.

§ 15031: Amendment filed as an emergency. Certificate of compliance included.

§ 15033: Amendment filed as an emergency. Certificate of compliance included.

§ 15034: Amendment filed as an emergency. Certificate of compliance included.

§ 15037: Amendment filed as an emergency. Certificate of compliance included.

§ 15039: Amendment filed as an emergency. Certificate of compliance included.

§ 15050: Amendment filed as an emergency. Certificate of compliance included.

§ 15053: Amendment filed as an emergency. Certificate of compliance included.

§ 15061: Amendment filed as an emergency. Certificate of compliance included.

§ 15062: Repealer filed as an emergency. Certificate of compliance included.

§ 15063: Amendment filed as an emergency. Certificate of compliance included.

§ 15064: Amendment filed as an emergency. Certificate of compliance included.

§ 15065: Amendment filed as an emergency. Certificate of compliance included.

§ 15065.5: New section filed as an emergency. Certificate of compliance included.

§ 15066: Repealer and new section filed as an emergency. Certificate of compliance included.

§ 15067: Amendment filed as an emergency. Certificate of compliance included.

§ 15068: Amendment filed as an emergency. Certificate of compliance included.

§ 15069: Amendment filed as an emergency. Certificate of compliance included.

§ 15070: Amendment filed as an emergency. Certificate of compliance included.

§ 15071: Amendment filed as an emergency. Certificate of compliance included.

§ 15073: Amendment filed as an emergency. Certificate of compliance included.

§ 15080: Amendment filed as an emergency. Certificate of compliance included.

§ 15081: Amendment filed as an emergency. Certificate of compliance included.

§ 15082: Amendment filed as an emergency. Certificate of compliance included.

§ 15083: Amendment filed as an emergency. Certificate of compliance included.

§ 15084: Amendment filed as an emergency. Certificate of compliance included.

§ 15085: Amendment filed as an emergency. Certificate of compliance included.

§ 15086: Amendment filed as an emergency. Certificate of compliance included.

§ 15087: Amendment filed as an emergency. Certificate of compliance included.

§ 15088: New section filed as an emergency. Certificate of compliance included.

§ 15101: Amendment filed as an emergency. Certificate of compliance included.

§ 15103: Amendment filed as an emergency. Certificate of compliance included.

§ 15104: Amendment filed as an emergency. Certificate of compliance included.

§ 15107: Amendment filed as an emergency. Certificate of compliance included.

§ 15108: Amendment filed as an emergency. Certificate of compliance included.

§ 15110: Amendment filed as an emergency. Certificate of compliance included.

§ 15112: Amendment filed as an emergency. Certificate of compliance included.

§ 15114: Amendment filed as an emergency. Certificate of compliance included.

§ 15115: Amendment filed as an emergency. Certificate of compliance included.

§ 15116: Amendment filed as an emergency. Certificate of compliance included.

§ 15141: Amendment filed as an emergency. Certificate of compliance included.

§ 15146: Amendment filed as an emergency. Certificate of compliance included.

§ 15147: New section filed as an emergency. Certificate of compliance included.

§ 15160: Amendment filed as an emergency. Certificate of compliance included.

§ 15161: Amendment filed as an emergency. Certificate of compliance included.

§ 15165: Amendment filed as an emergency. Certificate of compliance included.

§ 15180: New section filed as an emergency. Certificate of compliance included.

Register 74-03 § 15014: Amendment of subsection (b) filed as an emergency.

Register 74-04 § 15014: Amendment of subsection (b) filed as an emergency. Certificate of compliance included.

Register 74-13 § 15035.5: New section filed as an emergency.

§ 15074: New section filed as an emergency.

Register 74-26 § 15035.5: Certificate of compliance filed.

Register 75-01 § 15001: New section.

§ 15005: Amendment of section.

§ 15014: Amendment filed as an emergency.

§ 15022: Amendment of section.

§ 15027: Amendment of section.

§ 15028: Amendment of section.

§ 15029.6: New section.

§ 15035: Amendment of section.

§ 15035.5: Amendment of section.

§ 15037: Amendment of section.

§ 15050: Amendment of section.

§ 15052: Amendment of section.

§ 15053: Amendment of section.

§ 15060: Amendment of section.

§ 15061: Amendment of subsections (a), (b) and (f).

§ 15063: Amendment of section.

§ 15065: Amendment of subsection (d).

§ 15066: Amendment of section.

§ 15068: Amendment of section.

§ 15070: Amendment of subsection (c) filed as an emergency.

§ 15073: Amendment of section.

§ 15080: Amendment of section.

§ 15085: Amendment of section.

§ 15086: Amendment of section.

§ 15087: Amendment of section.

§ 15100: Amendment of section.

§ 15100.1: New section.

§ 15100.2: New section.

§ 15100.3: New section.

§ 15100.4: New section.

§ 15101: Amendment of subsection (c).

§ 15112: Amendment of section.

§ 15113: Repealer and new section.

§ 15114: Repealer and new section.

§ 15115: Repealed.

§ 15116: Repealed.

§ 15143: Amendment of section.

§ 15145: Amendment of section.

§ 15146: Amendment of subsection (a).

§ 15147: Renumbering and amendment of subsection (c) to § 15148.

§ 15148: New section.

§ 15160: Amendment of subsections (a) and (c).

§ 15161: Amendment of subsections (a), (b), and (d), and repealer of subsection (e).

§ 15161.5: New section.

§ 15162:Amendment of section.

§ 15163: Amendment and new subsection (b).

Register 75-05 § 15024: Amendment filed as an emergency.

§ 15054.1: New section filed as an emergency.

§ 15081: New subsection (c)(10) filed as an emergency.

Register 75-18 § 15014: Certificate of compliance filed.

§ 15070: Certificate of compliance filed.

§ 15074: Certificate of compliance filed.

Register 75-22 § 15024: Certificate of compliance filed.

§ 15054.1: Certificate of compliance filed.

Register 76-02 § 15190: New Article 12 (§§ 15190-15192) filed as an emergency.

Register 76-14 § 15190: Certificate of compliance filed.

Register 76-41 § 15011: New section.

§ 15013: Amendment of section.

§ 15023.5: New section.

§ 15029: Amendment of section.

§ 15029.6: Amendment of subsection (a).

§ 15031: Amendment of section.

§ 15032: Amendment of section.

§ 15033: Amendment of section.

§ 15037: Amendment of section.

§ 15039: Amendment of section.

§ 15040: Amendment of section.

§ 15050: New subsection (d).

§ 15051: New subsection (b).

§ 15061: New subsection (g).

§ 15063: Amendment of section.

§ 15064: Amendment of section.

§ 15065: New subsection (e).

§ 15068.5: New section.

§ 15069: Amendment of section.

§ 15069.5: New section.

§ 15070: Amendment of subsection (c) and new subsection (d).

§ 15071: Amendment of subsection (c).

§ 15073: Amendment of section.

§ 15075: New section.

§ 15081: Amendment of subsection (c).

§ 15082: Amendment of section.

§ 15083: Amendment of section.

§ 15084: Amendment of section.

§ 15085: Amendment of subsections (a), (b), (d), (g) and (h).

§ 15088: Amendment of section.

§ 15101: Amendment of section.

§ 15104: New subsection (g).

§ 15112: Amendment of section.

§ 15116: New section.

§ 15117: New section.

§ 15118: New section.

§ 15119: New section.

§ 15120: New section.

§ 15140: Amendment of section.

§ 15143: Amendment of section.

§ 15143.5: New section.

§ 15148: Amendment of section.

§ 15149: New section.

§ 15150: New section.

§ 15160: Amendment of subsection (c).

§ 15160.5: New section.

§ 15161: Amendment of subsection (c).

§ 15167: New section.

Appendix B: Amendment of Appendix.

Appendix F: Repealer and New Appendix filed.

Appendix G: New Appendix filed.

Appendix H: New Appendix filed.

Appendix I: New Appendix filed.

Register 77-01 § 15088: Amendment filed as an emergency. Certificate of compliance included.

§ 15090: New section filed as an emergency. Certificate of compliance included.

§ 15143.1: New section filed as an emergency. Certificate of compliance included.

Register 78-05 § 15011.6: New section.

§ 15012: Amendment of section.

§ 15023.7: New section.

§ 15029.6: Amendment of subsection (b).

§ 15030: Amendment of section.

§ 15035.7: New section.

§ 15039: Amendment of section.

§ 15050: New subsections (c)(12) and (e).

§ 15051: Amendment of section.

§ 15054.1: Amendment of section.

§ 15054.2: New section.

§ 15054.3: New section.

§ 15055: New section.

§ 15063: Amendment of section.

§ 15064: Amendment of section.

§ 15065.3: New section.

§ 15065.5: Amendment of section.

§ 15066: Amendment of section.

§ 15067: Amendment of section.

§ 15069.6: New section.

§ 15070: New subsection (e).

§ 15074: Amendment of subsections (c) and (d).

§ 15075: Renumbering of former § 15075 to § 15151 and new § 15075.

§ 15076: New section.

§ 15077: New section.

§ 15078: New section.

§ 15079: New section.

§ 15080: New subsection (g).

Register 80-19 § 15002: New section.

§ 15006: New section.

§ 15016: New section.

§ 15023.5: Amendment of section.

§ 15032.5: New section.

§ 15037: Amendment of subsection (b).

§ 15041: New section.

§ 15042: New section.

§ 15043: New section.

§ 15050: New subsection (f).

§ 15054.1: Amendment of section.

§ 15054.2: Amendment of subsection (b).

§ 15063: New subsection (h).

§ 15066: Amendment of section.

§ 15067: Amendment of subsection (a).

§ 15067.5: New section.

§ 15068.6: New section.

§ 15068.6: New section.

§ 15069.7: New section.

§ 15069.8: New section.

§ 15074: Amendment of subsection (a) and new subsection (e).

§ 15076: Amendment of section.

§ 15079: Amendment of section.

§ 15079.1: New section.

§ 15079.2: New section.

§ 15079.3: New section.

§ 15079.4: New section.

§ 15079.5: New section.

§ 15080: Amendment of subsections (c)(1) and (g).

§ 15085: Amendment of subsection (h)(1).

§ 15085.5: Amendment of subsection (d).

§ 15088: New subsections (d) and (e).

§ 15089: Amendment of subsection (b).

§ 15100.2: New subsection (c).

§ 15101: Amendment of subsection (e) and new subsections (n) and (o).

§ 15102: Amendment of section.

§ 15103: Amendment of section.

§ 15104: New subsection (h).

§ 15105: Amendment of section.

§ 15111: New subsection (c).

§ 15125: New section.

§ 15126: New section.

§ 15127: New section.

§ 15140: Amendment of subsection (b).

§ 15140.5: New section.

§ 15142: Amendment of section.

§ 15143: Amendment of subsections (a), (c), and (d).

§ 15146: Amendment of subsection (b).

§ 15149: New subsection (d).

§ 15161.5: Amendment of subsection (d) and new subsections (e) and (f).

§ 15161.6: New subsection (b)(7).

§ 15165.5: New section.

Appendix A: Amendment of Appendix.

Appendix B: Amendment of Appendix and footnotes.

Appendix D: Amendment of Appendix.

Appendix F: Amendment of Section II.

Appendix G: Amendment of subsections (j) and (v) and new new subsections (y) and (z).

Register 83-29 § 15000: Editorial correction of 7-13-83 order redesignating

effective date to 8-1-83.

§ 15001: Editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15002: Amendment of section and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15004: New section and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15005: Editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15006: Editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15007: Editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15020: Repealer of Article 2 (§§ 15005 and 15006) and new Article 2 (§§ 15020-15025) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15040: Repealer of Article 3 (§§ 15010-15016) and new Article 3 (§§ 15040-15045) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15050: Repealer of Article 4 (§§ 15020-15043) and new Article 4 (§§ 15050-15053) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15060: Repealer of Article 5 (§§ 15050-15056) and new Article 5 (§§ 15060-15065) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15070: Repealer of Article 6 (§§ 15060-15069.8) and new Article 6 (§§ 15070-15075) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15082: Repealer of Article 7 (§§ 15080-15089) and new Article 7 (§§ 15080-15096) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15100: Renumbering and amendment of former Article 8 (§§ 15100-15129) to Article 19 (Sections 15300-15329) and new Article 8 (§§ 15100-15112) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15122: Repealer of Article 9 (§§ 15140-15151) and new Article 9 (§§ 15120-15132) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15140: Repealer of Article 10 (§§ 15160-15167) and new Article 10 (§ 15140-15153) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15162: Repealer of Article 11 (§ 15180) and new Article 11 (§§ 15160-15170) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15184: Repealer of Article 12 (§§ 15190-15193 and new Article 12 (§§ 15180-15185) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15201: Repealer of Article 13 (§§ 15201-15203) and new Article 13 (§§ 15200-15209) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15220: New Article 14 (§§ 15220-15228) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15230: New Article 15 (§§ 15230-15233) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15240: New Article 16 (§ 15240) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15250: New Article 17 (§§ 15250-15253) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15260: New Article 18 (§§ 15260-15277) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15300: Renumbering and amendment of former Article 8 (§§ 15100-15129) to Article 19 (§§ 15300-15329) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

§ 15350: New Article 20 (§§ 15350-15387) and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

Appendix K: New Appendix and editorial correction of 7-13-83 order redesignating effective date to 8-1-83.

Register 86-05

§ 15006: Amendment of subsections (g), (m), and (u).

§ 15023: Amendment of subsection (e) and new subsection (g).

§ 15024: Amendment of section.

§ 15061: Amendment of subsection (d).

§ 15062: Amendment of subsections (b) and (c).

§ 15075: Amendment of subsections (c) and (d).

§ 15082: Amendment of subsection (b).

§ 15085: Amendment of subsections (a) and (d).

§ 15087: Amendment of subsection (a).

§ 15094: Amendment of subsections (b) and (c).

§ 15096: Amendment of subsections (b) and (d).

§ 15102: Amendment of section.

§ 15110: Amendment of subsection (a)(2).

§ 15183: Amendment of section heading and subsections (a)(2) and (b).

§ 15312: Amendment of section.

§ 15372: Amendment of section.

Appendix C: Amendment of Appendix.

Appendix D: Amendment of Appendix.

Appendix E: Amendment of Appendix.

Register 94-33

§ 15063: Amendment of section.

§ 15072: Amendment of subsections (a), (a)(3), and note.

§ 15087: Amendment of subsection (a)(3) and note.

§ 15088.5: New section.

§ 15126: Amendment of subsection (d), repealer and new subsections (d)(1)-(4), amendment of subsection (d)(5), new subsections (d)(5)(A)-(B)3, designation of subsection (d)(5)(C) and amendment of note.

§ 15162: Amendment of section heading, section, and note.

§ 15164: Amendment of section heading, section, and note.

Register 97-22

§ 15062: Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C).

§ 15064: Amendment of section heading, section and note.

§ 15065: Amendment of subsection (a) and note.

§ 15070: Amendment of section heading, section and note.

§ 15072: Amendment of section heading, section and note.

§ 15073: Amendment of section heading, section and note.

§ 15074: Amendment of section heading, section and note.

§ 15074.1: New section.

§ 15075: Amendment of section heading and section.

§ 15081.5: New section.

§ 15083.5: New section.

Article 9. Contents of Environmental Impact Reports

Section
15140. General
15141. Description of Project
15142. Description of Environmental Setting
15143. Environmental Impact
15144. Organizations and Persons Consulted
15145. Water Quality Aspects
15146. Contents of Final Environmental Impact Report

Article 10. Evaluation of Environmental Impact Reports

Section
15160. Adequate Time for Review and Comment
15161. Review of Environmental Impact Reports
15162. Failure to Comment
15163. Requests for Environmental Documents
15164. Public Participation
15165. Public Hearings
15166. Retention and Availability of Comments

Appendices

Appendix A. Flow Chart
Appendix B. Statutory Authority of State Departments
Appendix C. Notice of Completion Form

Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

Article 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000–21174 as amended by Chapter 1154 of the Statutes of 1972 (AB 889). Implementation of the act includes the orderly evaluation of projects and the preparation of environmental impact reports.

Article 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, examine and institute methods of reducing adverse impacts, and consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project. An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved—public agencies retain existing authority to balance environmental objectives with economic and social objectives.

15013. Early Preparation. An EIR is a useful planning tool to enable environmental constraints and opportunities to be considered before project plans are finalized. EIR's should be prepared as early in the planning process as possible to enable environmental considerations to influence project program or design.

15014. **Application.** These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects. Such internal procedures must be consistent with these Guidelines, and shall be adopted within sixty days after these Guidelines are adopted. Individual public agencies shall also coordinate the procedures outlined in these Guidelines with procedures they have been using up to April 5, 1973, in undertaking or approving projects—in doing so, however, agencies are not free to compromise the basic principles, objectives, criteria, and definitions included here.

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 through 21174.

15023. Categorical Exemption. Categorical Exemption means an exception from the requirement for the preparation of an environmental impact report for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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.

15025. Emergency. Emergency means a sudden and catastrophic calamity caused by an occurrence or combination of occurrences of statewide or local impact, such as fire, flood, earthquake or other natural disaster, riot, war, accident, or sabotage.

15026. Environment. Environment means the physical conditions which exist in the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines.

(b) Final EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines, a section for comments received in the consultation process, and the response of the Responsible Agency to the comments received. This term is discussed in detail in Section 15146.

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact report prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect on the environment where more than one public agency is involved with the same underlying activity.

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, special districts, redevelopment agencies and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

15033. Negative Declaration. Negative declaration means a statement by the public agency that will carry out or approve a project that a project, although not categorically exempt, would not have a significant effect on the environment and therefore does not require an EIR. The term "Exemption Declaration" is interchangeable with the term "Negative Declaration".

15034. Notice of Completion. Notice of Completion means a brief report filed with the Secretary for Resources as soon as a public agency has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency when it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this report are explained in Section 15085(g).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the state Legislature.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

15038. Public Agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means the public agency which proposes to undertake or approve a project, and is responsible for making a Negative Declaration or for the preparation of an EIR.

15040. Significant Effect. Significant effect means a substantial adverse impact on the environment.

Article 5. General Responsibilities.

15050. Public Agencies. All public agencies are responsible for complying with the CEQA, according to these Guidelines. They must develop their own procedures consistent with these Guidelines. Where a public agency prepares an EIR itself or contracts with private experts to do the preparation, the public agency is responsible entirely for the adequacy and objectivity of the EIR.

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary of the Resources Agency. The guidelines shall be officially adopted by the Secretary of the Resources Agency, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. He also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary of the Resources Agency may issue supplements to these Guidelines, containing amendments and/or additions.

15053. Fees. (a) All public agencies preparing EIRs for projects to be carried out by some entity other than the public agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR.

(b) Public agencies may charge and collect a fee from members of the public for the actual cost of reproducing a copy of an EIR requested by the member of the public.

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

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Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that the activity in question will not have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental impact reports do not apply.

15061. State and Local Agency Projects (Public Projects). (a) When a public agency plans to carry out a project which may have a significant effect on the environment, the public agency shall prepare an EIR through its own efforts or through contract.

(b) Where a project which may have a significant effect on the environment is to be carried out by a nongovernmmental person subject to approval, financial support, or some other involvement by a public agency, the public agency will prepare an EIR by its own efforts or by contract. However, the agency may require the person to supply data and information, both to determine whether the project may have a significant impact on the environment, and to assist in the preparation of an EIR by the agency. This information may take the form of a draft EIR, if the agency desires.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to modification according to the regulations governing the lead agency principle, that not more than one EIR shall be prepared in connection with the same underlying activity.

15062. Private Projects. Projects undertaken by a person other than a public agency which are supported in whole or part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or which involve the issuance to a person of a lease, permit, license, certificate, or other entitlement to use by one or more public agencies require the preparation of an environmental impact report if the project may have a significant effect on the environment and the project involves discretionary governmental action unless the project is otherwise exempted by these Guidelines. The public agency with discretionary control over the project shall be responsible for preparing the environmental impact report.

15063. Federal Projects. (a) In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their comments an EIR setting forth the matters specified in Section 15143 of these Guidelines.

(b) In cases where these Guidelines require the preparation of an EIR by a responsible agency and an EIS has been or will be prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an EIR required by these Guidelines, provided that the EIS or the part thereof so used, shall comply with the requirements of these Guidelines. In most cases where the federal EIS is used, discussion of mitigation measures and growth inducing impact will have to be added because these elements are required by CEQA but not by the National Environmental Policy Act.

15064. Lead Agency Principle. Where a project is to be carried out or approved by more than one public agency, only one EIR or Negative Declaration shall be made, and it will be prepared by the Lead Agency. For the purposes of these Guidelines, only one EIR or Negative Declaration shall be made by the Lead Agency for an ongoing activity even where the activity involves, at different stages, more than one definition of a project as defined in Section 15037(a).

15065. Designation of Lead Agency. Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) The Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities

required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) In the event that the designation of a Lead Agency is in dispute among public agencies, any public agency may submit the question to the Office of Planning and Research which shall designate the Lead Agency based on consideration of the above priorities, along with consideration of the capacity of such agency to adequately fulfill the requirements of the CEQA.

15066. Obligations of a Lead Agency. (a) In these Guidelines, wherever reference is made to the responsible agency for a project, this shall be the Lead Agency when more than one public agency is involved in undertaking or approving the project. The Lead Agency shall meet all obligations for which the responsible agency is responsible, including the determination of whether the project will or will not have a significant effect on the environment.

(b) The Lead Agency shall prepare or cause to be prepared the EIR or Negative Declaration after consultation with all other public agencies which must approve the project in question or a part of the project. To insure that the EIR or Negative Declaration reflects the concerns of all the public agencies involved, the Lead Agency should consult with public agencies which will issue approvals for the project. This consultation shall be done at an early stage of the development of the EIR.

(c) The Lead Agency shall include in its Notice of Completion a statement to the effect that it is a Lead Agency.

(d) The EIR prepared by the Lead Agency shall be considered by every public agency prior to its approval or disapproval of the project.

15067. Subsequent EIR. Where an EIR has been prepared, no additional EIR need be prepared unless:

(a) Substantial changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in the original EIR;

(b) There are substantial changes with respect to the circumstances under which the project is to be undertaken, such as a change in the proposed location of the project, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in the original EIR.

15068. Use of a Single EIR. A responsible agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, a responsible agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects

are essentially the same. Agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should amend the EIR it prepares for a program to apply it to an individual project with unusual characteristics.

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the responsible agency or Lead Agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Responsible Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project, subject to the limitation of Section 15066 of these Guidelines. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but should in either case comment upon the combined effect.

15070. Ongoing Project. (a) A project covered by Section 15037(a)(1) definition of project specified by these Guidelines, approved prior to November 23, 1970, shall not require an Environmental Impact Report or a Negative Declaration—unless it is a project which may have a significant effect on the environment, and

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project in such a way as to mitigate against potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; or

(2) The responsible agency proposes a modification to the project plan, such that the project might have a new significant effect on the environment.

(b) Notwithstanding the above, projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those Guidelines, do not require an EIR under CEQA—unless they fall under (2) above.

(c) A project covered by paragraph 15037(a)(3) or contracts in paragraph 15037(a)(2) under the definition of project specified by these Guidelines, approved prior to December 5, 1972, does not require an EIR. However, any project legally challenged prior to this date for noncompliance with the CEQA shall be bound by special rules set forth in Section 21170 of the CEQA.

(d) These Guidelines and CEQA do not require the preparation of an EIR for a project described in paragraph 15037(a)(3) and for contracts described in paragraph 15037(a)(2) under the definition of project for approvals prior to April 5, 1973. However, CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(e) Where a project involving the issuance of a lease, permit, license, certificate, or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and requires another or additional discretionary governmental approvals after April 5, 1973, the project shall require the preparation of an EIR only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility and control over the project as a whole.

15071. Emergency Projects. The following emergency projects are exempt from the requirement for an environmental impact report:

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects do not require the preparation of environmental impact reports. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and it is anticipated that each public agency will make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature:

(a) Issuance of building permits.
(b) Issuance of business licenses.
(c) Approval of final subdivision maps.

(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial. Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

Article 7. Evaluating Projects

15080. Initial Study. If the project is not part of a class of projects that qualifies for a Categorical Exemption and there is a possibility that the project may have a significant effect on the environment, the responsible agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved.

If the project is to be carried out by a nongovernmental person, the responsible agency may require such person to submit data and information which will enable the responsible agency to make this determination.

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the public agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the public agency shall consider both primary and secondary consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may have a significant effect on the environment in connection with most projects where they occur, include the following:

(1) Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

(2) Has a substantial and demonstrable negative aesthetic effect;

(3) Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

(4) Causes substantial interference with the movement of any resident or migratory fish or wildlife species;

(5) Breaches any published national, state, or local standards relating to solid waste or litter control;

(6) Results in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas;
(7) Involves the possibility of contaminating a public water supply system or adversely affecting ground water;
(8) Could cause substantial flooding, erosion or siltation;
(9) Is subject to major geologic hazards.

15082. Mandatory Findings of Significance. In every case where any of the following conditions are found to exist as a result of a project, the project will be found to have a significant effect on the environment:
(a) Impacts which have the potential to degrade the quality of the environment, or curtail the range of the environment.
(b) Impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.
(c) Impacts for a project which are individually limited, but cumulatively considerable. A project may impact on two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.
(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

15083. Negative Declaration. A Negative Declaration shall be prepared for a project which would ordinarily be expected to have a significant effect on the environment, but which the Public Agency finds will have no significant effect on the environment due to circumstances peculiar to the specific project.
(a) A Negative Declaration must include a description of the project as proposed, and a finding that the project will not have a significant effect on the environment.
(b) The Negative Declaration followed by notice of the action taken regarding the approval or disapproval of the project must be filed with the Secretary for Resources, if the responsible agency is a state agency, board or commission. If the responsible agency is a local agency, as defined in these Guidelines, these documents shall be filed with the county clerk of the county, or counties, in which the project will be located. The Negative Declaration shall be filed with sufficient time before the project is approved to provide an opportunity for members of the public to respond to the finding. The Negative Declaration should not exceed one page in length.

(c) After completing a Negative Declaration, the responsible agency shall file a copy of the Negative Declaration and a Notice of Determination. The Notice of Determination shall include the decision of the agency to approve or disapprove the project, the determination of the agency whether the project will have a significant effect on the environment, and whether an EIR has been prepared pursuant to the provisions of CEQA.

(1) If the responsible agency is a state agency, the Notice of Determination shall be filed with the Secretary of Resources.

(2) If the responsible agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located.

15084. Decision to Prepare an EIR. If the responsible agency finds, after an initial study, that the project may have a significant effect on the environment, the responsible agency must prepare or cause to be prepared an Environmental Impact Report.

15085. EIR Process. The following steps shall be followed after the responsible agency decides to prepare an EIR.

(a) If the project is to be carried out by a nongovernmental person, the responsible agency may require such person to submit data and information necessary to enable the public agency to prepare the EIR. This information may be transmitted in the form of a draft EIR, but the responsible agency must examine this draft and the information contained within it to assure itself of its accuracy and objectivity and amend the draft if necessary. The EIR in its final form must reflect the independent judgment of the responsible agency.

(b) The content of an EIR is described in article 9 of these Guidelines. Each element of an EIR required by these Guidelines must be covered, and these elements should be separated into distinct sections. After completing a draft EIR consisting of the information specified in Sections 15141, 15142, and 15143 of these Guidelines, the responsible agency must consult with, and obtain the comments of, any public agency which has jurisdiction by law with respect to the project and may consult with any person who has special expertise with respect to any environmental impact involved. Opportunity for comments from the general public should be provided.

(c) As soon as the draft EIR is completed, but before copies are sent out for review, an official notice stating that the draft EIR has been completed must be filed with the Secretary of the Resources Agency. The notice shall include a brief description of the project, its proposed location, and an address where copies of the EIR are available. This notice shall be referred to as a Notice of Completion. A form for this notice is provided in the Appendices.

(d) The responsible agency shall evaluate comments received from persons who reviewed the draft EIR.

(e) The responsible agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

(f) The final EIR shall be presented to the decision-making body of the responsible agency. The decision-making body shall adopt the final EIR and consider the contents of the report when it makes a decision on the project.

(g) After making a decision on the project, the responsible agency shall file a notice of action taken on the project. This notice shall be referred to as a Notice of Determination. Such notice shall include (1) the decision of the agency to approve or disapprove the project, (2) the determination of the agency whether the project will or will not have a significant effect on the environment, and (3) whether an EIR has been prepared pursuant to the provisions of CEQA.

(1) If the responsible agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the responsible agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located.

(h) If the responsible agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

15086. EIR Combined with Existing Planning and Review Process. To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process being used by the responsible agency. The responsible agency shall include the EIR as a part of the regular project report where such a report is used in the existing review and budgetary process.

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required by these Guidelines. Additional notices may include the determination that a project is categorically exempt, that a project is covered by the emergency exemption or the ministerial exemption, or that an activity is not covered by the act at all.

Article 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of an EIR.

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor, and publicly owned utilities used to convey or distribute electric power, natural gas, sewage, etc.;

(c) Existing highways and streets (within already established rights-of-way) sidewalks, gutters, bicycle and pedestrian trails, and similar facilities;

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structure before the addition or alteration, or 2500 square feet, whichever is less;

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features (including navigational devices) where these devices do not have or result in an adverse environmental impact;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family rental units into condominiums;

(*l*) Demolition and removal of buildings and related structures except where they are of historical, archaeological or architectural consequence as officially designated by Federal, State or local governmental action.

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%;

(b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new facilities or structures listed in this notice and installation or new equipment and facilities including but not limited to:

(a) Single family residences not in conjunction with the building of two or more such units;

(b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(c) Stores, offices, and restaurants if designed for an occupant load of 20 persons of less, if not in conjunction with the building of two or more such structures;

(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction;

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

15104. Class 4: Minor Alterations to Land. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation, including but not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard;

(b) New gardening or landscaping but not including tree removal;

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site;

(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas of fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

15105. Class 5: Alterations in Land Use Limitations. Class 5 consists of minor alterations in land use limitations, except zoning, including but not limited to:

(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel nor in any change in land use or density;

(b) Issuance of minor encroachment permits.

15106. Class 6: Information Collection. Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Regulatory Actions for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies, as authorized by state law or local ordinance, to assure the maintenance, restoration, or enhancement of a natural resource, including but not limited to wildlife preservation.

15108. Class 8: Regulatory Actions for the Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state law or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment.

15109. Class 9: Inspections. Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10: Loans. Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

15111. Class 11: Accessory Structures. Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots.

15112. Class 12: Surplus Government Property Sales. Class 12 consists of sales of surplus government property except for parcels of land.

15113. Relation to Ministerial Projects. Section 21080 of the Public Resources Code as added by Chapter 1154, Statutes of 1972, exempts all ministerial projects and activities of public agencies from application of the CEQA. The matter of what is or is not a ministerial project is up to the determination of each public agency, based on an examination of the applicable laws and ordinances. Thus, while the Categorical Exemptions listed in this subsection contain classes or examples of projects which in many cases will be ministerial, the inclusion of them is in no way intended to imply any finding here that, in any particular jurisdiction, they are ministerial or discretionary. The exemptions, naturally, only apply where the project in question is found to be discretionary.

15114. Exception by Location. Class 3, 4, 5 and 11 are qualified by considerations of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, EXCEPT where the project may impact on an environmental resource, or hazard of critical concern as may be hereafter designated, precisely mapped, and officially adopted pursuant to law. Moreover, all exemptions for these classes are inappliable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

15115. Revisions To List of Categorical Exemptions. (a) Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one deleted. This request must be made in writing to the Office of Planning and Research. If a new class is to be added, it will be referred to, pending adoption, as a Proposed Class for Categorical Exemption, and shall include detailed information about the type of projects involved. The Proposed Class for Categorical Exemption must also give detailed information supporting the contention that the type of projects in question do not significantly affect the environment. Where the projects may potentially be carried out in substantially differing environments, specific mention should be made as to the type of environment in which the exemption may be applied, or not applied.

(b) If the request is to delete an existing class of Categorical Exemptions, detailed information must be included to support the contention that the type of projects does significantly affect the environment. The request may, instead of proposing full deletion, only propose limitation on the applicability of the class of Categorical Exemption to certain environments, or out of certain environments.

(c) The Office of Planning and Research will consider the request, and deliver the request as soon as possible, with a recommendation supporting or opposing the request, to the Secretary for Resources, who shall make the final determination on accepting or rejecting the proposal. Adoption of the revision will require an amendment to these guidelines. Amendments must be made in accord with the Administrative Procedure Act, including provisions for notice and public comment.

15116. Application by Public Agencies. The classes listed in this article are broadly drawn, as are the examples given with each. Each public agency shall, in the course of establishing its own prrocedures, list those specific activities which fall within each class, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes.

Article 9. Contents of Environmental Impact Reports

15140. General. Environmental impact reports shall contain the information outlined in this article.

15141. Description of Project. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals.

15142. Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

15143. Environmental Impact. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs.

(a) **The Environmental Impact of the Proposed Action:** Describe the direct and indirect impacts of the project on the environment, giving due consideration to both the short-term and long-term effects. It should include specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) **Any Adverse Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented:** Describe any adverse impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Do not neglect impacts on any aesthetically valuable surroundings, or on human health.

(c) **Mitigation Measures Proposed to Minimize the Impact:** Describe any mitigation measures written into the project plan to reduce significant environmentally adverse impacts to insignificant levels, and the basis for considering these levels acceptable. Where a particular mitigation measure has been chosen from among several alternatives should be discussed and reasons should be given for the choice made.

(d) **Alternatives to the Proposed Action:** Describe any known alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. Attention should be paid to alternatives capable of substantially reducing or eliminating any environmentally adverse impacts, even if these alternatives substantially impede the attainment of the project objectives, and are most costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. With respect to water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards, reference to the certification should be made.

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of the Draft EIR containing the elements described in Sections 15141, 15142, and 15143 of these Guidelines, a section containing the comments received through the consultation process described in Article 10, either verbatim or in summary, and the response of the Responsible Agency to the significant environmental points raised in the review and consultation process.

(b) The response of the Responsible Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Responsible Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

Article 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment. The Responsible Agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) These Guidelines do not provide a fixed period of time for this review and consultation process in order to allow variations according to local needs. Public agencies may establish time periods for review in their implementing procedures and shall notify reviewing agencies of the time periods.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) While state and local agencies are not bound by federal guidelines for implementing the National Environmental Policy Act, the time limits in the federal guidelines provide an example that may be followed in some situations. The federal guidelines require at least 90 days for the review of a draft EIR and another 30 days for the review of a final EIR. Review periods of this length may be desirable for some large, public projects, but shorter periods may be provided where the shorter period will still allow adequate review.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

15161. Review of Environmental Impact Reports. (a) Public agencies must develop procedures to ensure that project sponsors obtain and receive adequate comments on their EIRs from public agencies which have jurisdiction by law with respect to the project. Such procedures should include provisions for consultation with persons who have special expertise in environmental matters. It is suggested that public agencies utilize existing state, and regional or local clearinghouses to distribute EIRs and other environmental documents to appropriate agencies.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have legal jurisdiction and/or special expertise with respect to various projects and project locations. Appendix B to these Guidelines identifies state agencies which have legal jurisdiction over, or special expertise in, various impacts. This could be the basis for a part of such listings.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the act to provide decision-makers with useful information about such factors.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the project sponsor with the name of a contact person who is available for later consultation should this prove necessary.

15162. Failure to Comment. If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Responsible Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

15163. Requests for Environmental Documents. The Responsible Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

15164. Public Participation. While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15165. Public Hearings. (a) A public hearing on the environmental impact of a project should usually be held when the sponsor determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as the outline for discussion at a public hearing. For local agencies, the hearing may be held at the city hall, county administrative building or other place where public hearings are regularly conducted by the agency. As to other public agencies, the hearing may be held at a location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

15166. Retention and Availability of Comments. Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the Final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

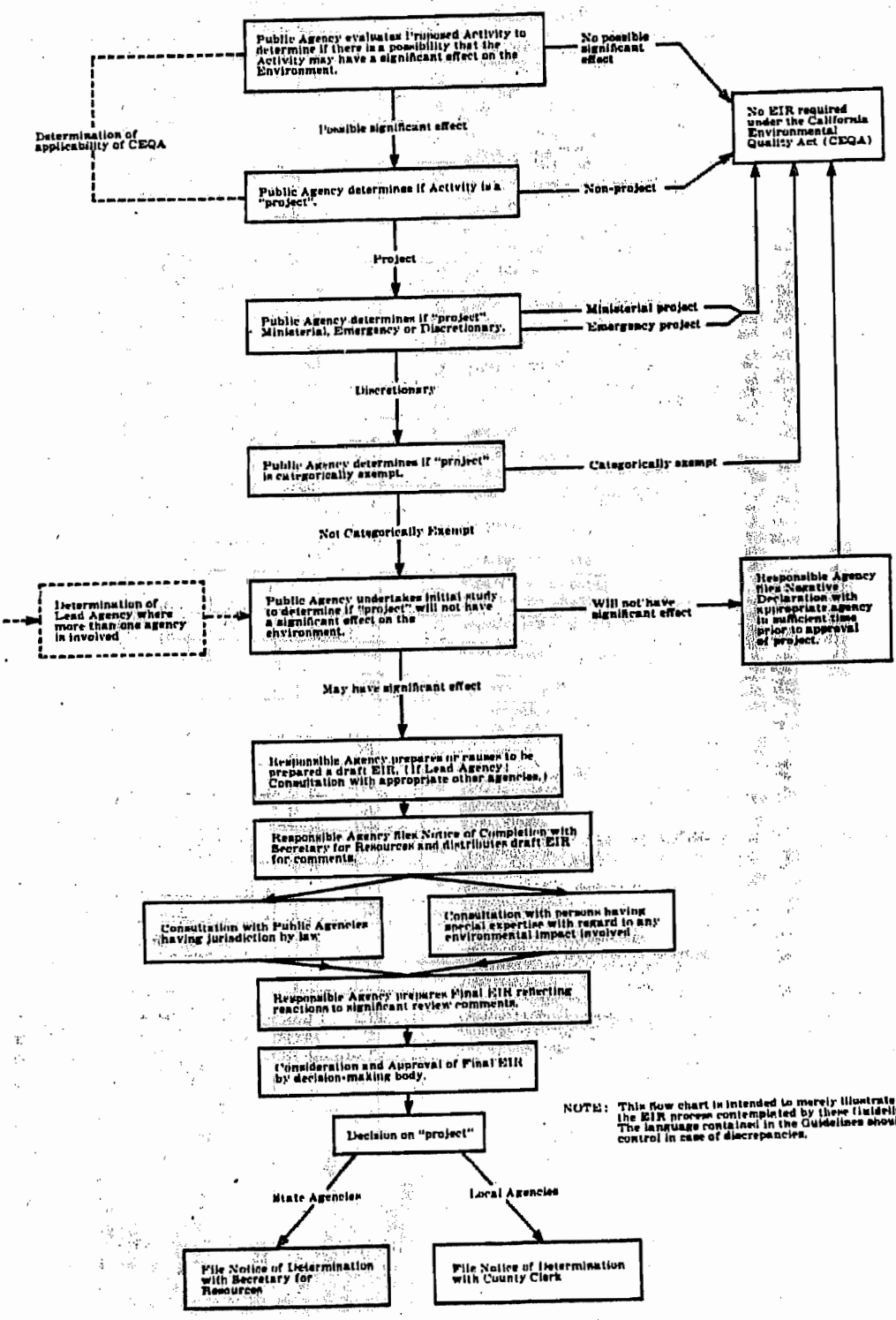
APPENDICES

Appendix A	Flow Chart
Appendix B	Statutory Authority of State Departments
Appendix C	Notice of Completion Form

ENVIRONMENTAL IMPACT REPORT PROCESS

Appendix A

FLOW CHART



NOTE: This flow chart is intended to merely illustrate the EIR process contemplated by these Guidelines. The language contained in the Guidelines should control in case of discrepancies.

Appendix B

STATUTORY AUTHORITY OF STATE DEPARTMENTS IN AREAS OF ENVIRONMENTAL CONCERN

	1 Air quality and air pollution control	2 Chemical contamination and food products	3 Coastal areas, wetlands, estuaries, waterfowl refuges and beaches	4 Congestion in urban areas, housing and building displacement	5 Disease control	6 Electric energy generation and supply	7 Environmental effects with special impact in low-income neighborhoods	8 Flood plains and watersheds	9 Food additives and food sanitation	10 Herbicides	11 Historic and Archeological sites	12 Human ecology	13 Microbiological contamination	14 Mineral land reclamation	15 Natural gas energy development generation and supply	16 Navigable airways	17 Navigable waterways	18 Noise control and abatement	19 Parks, forests, trees and outdoor recreation areas	20 Pesticides	21 Radiation and radiological health	22 Regional comprehensive planning	23 Rodent control	24 Sanitation and waste systems	25 Shellfish sanitation	26 Soil and plant life, sedimentation, erosion and hydrologic conditions	27 Toxic materials	28 Transportation and handling of hazardous materials	29 Water quality and water pollution control	30 Fish and wildlife	31 Activities with special impact on regional jurisdictions	32 Water project formulation	33 Geothermal energy	34 Oil and petroleum development, generation and supply	35 Statewide land use patterns	36 Open Space policy	37 Statewide overview—cumulative impact of separate projects
AGRICULTURE AND SERVICES AGENCY																																				
Agriculture	*/1/	X			X			X	X	X		/3	X						X	X				/3		X	X	/4	X	/5						
BUSINESS AND TRANSPORTATION AGENCY																																				
Aeronautics	X															X		X				X													
CHP	/6																	X									X								
Corporations																																				
DMV	X			X			X															X														
H CD				X			X															X						X								
Office of Transp. Planning & Research				X			X				X																	X								X
Public Works				X			X	X	X																											
Real Estate																						X														
Savings and Loan																						X														

* See Appendix B footnotes.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
	Air quality and air pollution control	Chemical contamination and food products	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	Conservation in urban areas, housing and building displacement	Disease control	Electric energy generation and supply	Environmental effects with special impact in low-income neighborhoods	Flood plains and watersheds	Food additives and food sanitation	Herbicides	Historic and Archeological sites	Human ecology	Microbiological contamination	Mineral land reclamation	Natural gas energy development reinforcement and supply	Navigable airways	Navigable waterways	Noise control and abatement	Parks, forests, trees and outdoor recreation areas	Pesticides	Radiation and radiological health	Regional comprehensive planning	Rodent control	Sanitation and waste systems	Shellfish sanitation	Soil and plant life, sedimentation, erosion and hydrologic conditions	Toxic materials	Transportation and handling of hazardous materials	Water quality and water pollution control	Fish and wildlife	Activities with special impact on regional jurisdictions	Water project formulation	Geothermal energy	Oil and petroleum development, reclamation and supply	Statewide land use patterns	Open Space policy	Statewide overview—cumulative impact of separate projects
HUMAN RELATIONS AGENCY																																					
Public Health	X	X	/7	/8	X	X	/9		X	X		X	X			/10		X		X	/14	/11	X	X		X		X	X	/12	/13						
RESOURCES AGENCY																																					
Air Resources Board	X			/25		X						X				X					/25											/25					
Colorado River Board		/14	/14		/14	/14	/14		/14				/14				/14		/14		/14	/14		/14	/14	/14	/14		/14	/14	/14	/14	/11				
Conservation	X		X		/23	/24		X		/23				X	X				X		X		/23	X		X		X			/24	X	X	X	X	X	
Fish and Game		X	X		X	X		X		X		X	X		X	/16	X	/17	X	X	X	X	X	/18	X	X		X	X		X	X					
NOD						X											X		X			X							X			X					
Parks and Recreation			X			X	/19	X		X	X	X		X					X	X		X	X			X		X									
State Lands Division			X								X			X	X		X		X							X											
State Reclamation Board								/21								/21															/21	/21						
State Water Resources Control Board	X	X	X	/22	X					X			X							X		X		X	X	X		X	X		X	/22	/22				
Water Resources			X			X		X					X								X	X			X				X			X					
OFFICE PF PLANNING AND RESEARCH																																			X	X	
COUNCIL ON INTERGOVERNMENTAL RELATIONS																						X													X		

NOTE: The following entities will also receive reports for review but their areas of environmental concern are not yet established: San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency and Wildlife Conservation Board.

APPENDIX B FOOTNOTES

No.

1. **Agriculture**—(1) Air quality and air pollution control
   Effects on plants and animals
2. **Agriculture**—(12) Human Ecology
   Protection of food and fibre
3. **Agriculture**—(24) Sanitation and waste systems
   Agriculture, dairy and feed lot systems
4. **Agriculture**—(28) Transportation and handling of hazardous materials
   As pertains to transportation, handling, storage and decontamination of pesticides.
5. **Agriculture**—(30) Fish and wildlife
   Pesticide effects, predatory animal control, bird control
6. **CHP**—(1) Air quality and air pollution control
   Enforcement of motor vehicle regulations
7. **Public Health**—(3) Coastal areas, wetlands, etc.
   Beach sanitation, water pollution, solid waste and mosquito control
8. **Public Health**—(4) Congestion in urban areas, housing and building displacement
   Pertains to health component
9. **Public Health**—(7) Environmental effects with special impact in low-income neighborhoods
   Most of these are strongly related to health
10. **Public Health**—(16) Navigable airways
    Pertains to noise
11. **Public Health**—(22) Regional comprehensive planning
    Pertains to personal and environmental health components
12. **Public Health**—(30) Wildlife
    As it may pertain to human health hazards
13. **Public Health**—(31) Activities with special impact on regional jurisdictions
    Pertains to comprehensive health planning
14. **Colorado River Board**—(2), (3), (5), (6), (8), (10), (13), (17), (19), (21), (22), (24), (26), (27), (29), (30), (31), (32) and (33).
    As pertains to the Colorado, New and Alamo Rivers
15. **Fish and Game**—(15) Natural gas energy development, generation and supply
    As field development and distribution systems may affect fish and wildlife
16. **Fish and Game**—(16) Navigable airways
    As may affect migrating and resident wildlife
17. **Fish and Game**—(18) Noise control and abatement
    As excessive noise may affect wildlife
18. **Fish and Game**—(24) Sanitation and waste systems
    As water quality may affect fish and wildlife
19. **Parks and Recreation**—(7) Environmental effects with special impact in low-income neighborhoods
    In impacted areas only
20. **Reclamation Board**—(8), (17) and (32)
    In areas of Board's jurisdiction only
21. **State Water Resources Control Board**—(4), (30), (33) and (34)
    As may pertain to water quality
22. **Conservation**—(5), (10), (20) and (23)
    With respect to forest land

23. **Conservation**—(6) and (32)
As related to fire protection or State (fire protection) responsibility land

24. **Air Resources Board**—(4), (22), (32), (33) and (36)
As may pertain to residential, commercial, industrial or transportation growth

Appendix C

State of California
The Resources Agency

SECRETARY FOR RESOURCES

1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTICE OF COMPLETION

Responsible Agency Division

Project Title

Address City County Zip

Contact Person Area Code Phone Ext.

PROJECT DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES

Project Location City Project Location County

Time Period Provided for Review

Address Where Copy of Draft EIR is Available

§ 15005
§ 15012
§ 15014
§ 15015
§ 15020.5
§ 15022
§ 15023
§ 15025
§ 15026
§ 15026.5
§ 15027
§ 15029.5
§ 15030
§ 15031
§ 15033
§ 15034
§ 15037
§ 15039
§ 15050
§ 15053
§ 15061
§ 15062
§ 15063
§ 15064
§ 15065
§ 15065.5
§ 15066
§ 15067
§ 15068
§ 15069
§ 15070
§ 15071
§ 15073
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§ 15083
§ 15084
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§ 15086
§ 15087
§ 15088
§ 15101
§ 15103
§ 15104
§ 15107
§ 15108
§ 15110
§ 15112
§ 15114
§ 15115
§ 15116
§ 15141
§ 15146
§ 15147
§ 15160
§ 15161
§ 15165
§ 15180

REVISION RECORD FOR REGISTER 73, No. 50
(December 15, 1973)

TITLE 14. NATURAL RESOURCES

DIVISION 6. RESOURCES AGENCY

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970

(Originally printed 2-10-73; revised 12-14-73)

This part of Register 73, No. 50, contains all the additions, amendments, and repeals affecting the above-entitled portion of the California Administrative Code which were filed with the Secretary of State from 12-8-73, to and including 12-15-73. The latest prior register containing regulations of the above agency is Register 73, No. 40 (10-6-73).

It is important that the holders of the above-entitled portion of the code check the section numbers listed below as well as the page numbers when inserting this material in the code and removing the superseded material. In case of doubt rely upon the section numbers rather than the page numbers since the section numbers must run consecutively even though there may be an error in the paging.

SECTION CHANGES

Unless otherwise noted, the sections listed below are amended herein.

15005
15012
15014
15015 Added
15020.5 Added
15022
15023
15025
15026
15026.5 Added
15027
15029.5 Added
15030
15031
15033
15034
15037
15039
15050
15053
15061
15062 Repealed
15063
15064
15065
15065.5 Added
15066 Repealed and Added
15067
15068
15069
15070
15071
15073
15080
15081
15082
15083
15084
15085
15086
15087
15088 Added
15101
15103
15104
15107
15108
15110
15112
15114
15115
15116
15141
15146
15147 Added
15160
15161
15165
15180 Added
Appendix A
Appendix B
Appendix C
Appendix D Added

(over)

(Precedes page 285, Title 14)

PAGE CHANGES

REMOVE Old Pages	INSERT Attached Pages
285–324	285–324
----	324.1–324.2

It Is Suggested That Superseded Material Be Retained. Save it and place it in a separate file under the original heading (either the appropriate title or register heading). It will then always be possible to find the prior wording of any section by using the history notes provided.

NOTE: This revision sheet is not a part of the code. It is chiefly for filing purposes. If preserved with the removed pages, it will afford a ready reference to the sections affected by agency action.

It is suggested that the latest Revision Record be retained for convenience in verifying whether or not the prior Register has been received.

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970

Article
1. General
2. Purpose
3. Policy
4. Definitions
5. General Responsibilities
6. Application of the Act to Projects
7. Evaluating Projects
8. Categorial Exemptions
9. Contents of Environmental Impact Reports
10. Evaluation of Environmental Impact Reports
Appendices
11. EIR Monitor

Detailed Analysis

Article 1. General

Section
15000. Authority

Article 2. Purpose

Section
15005. Purpose

Article 3. Policy

Section
15010. Legislative Declaration
15011. State Policy
15012. Informational Document
15013. Early Preparation
15014. Application
15015. Terminology

Article 4. Definitions

Section
15020. General
15020.5. Applicant
15021. Approval
15022. CEQA—California Environmental Quality Act
15023. Categorical Exemption
15024. Discretionary Project
15025. Emergency
15026. Environment
15026.5. Environmental Document
15027. EIR—Environmental Impact Report
15028. EIS—Environmental Impact Statement
15029. Feasible
15029.5. Initial Study
15030. Lead Agency
15031. Local Agency
15032. Ministerial Projects

Section
15033. Negative Declaration
15034. Notice of Completion
15035. Notice of Determination
15036. Person
15037. Project
15038. Public Agency
15039. Responsible Agency
15040. Significant Effect

Article 5. General Responsibilities

Section
15050. Public Agencies
15051. Office of Planning and Research (OPR)
15052. The Secretary of the Resources Agency
15053. Fees
15054. Timely Compliance

Article 6. Application of the Act to Projects

Section
15060. General Rule
15061. Projects Controlled by State or Local Agencies
15063. Federal Projects
15064. Lead Agency Principle
15065. Lead Agency Criteria
15065.5. Designation of Lead Agency by Office of Planning and Research
15066. Consultation with Responsible Agencies
15067. Subsequent EIR
15068. Use of a Single EIR
15069. Multiple and Phased Projects
15070. Ongoing Project
15071. Emergency Projects
15072. Feasibility and Planning Studies
15073. Ministerial Projects

Article 7. Evaluating Projects

Section
15080. Initial Study
15081. Determining Significant Effect
15082. Mandatory Findings of Significance
15083. Negative Declaration
15084. Decision to Prepare an EIR
15085. EIR Process
15086. EIR Combined with Existing Planning and Review Process
15087. Additional Notices
15088. Statement of Overriding Considerations

Article 8. Categorical Exemptions

Section
15100. Categorical Exemptions
15101. Class 1: Existing Facilities
15102. Class 2: Replacement or Reconstruction
15103. Class 3: New Construction of Small Structures
15104. Class 4: Minor Alterations to Land
15105. Class 5: Alterations in Land Use Limitations
15106. Class 6: Information Collection

Section
15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources
15108. Class 8: Actions by Regulatory Agencies for Protection of the Environment
15109. Class 9: Inspections
15110. Class 10: Loans
15111. Class 11: Accessory Structures
15112. Class 12: Surplus Government Property Sales
15113. Relation to Ministerial Projects
15114. Exception by Location
15115. Revisions to List of Categorical Exemptions
15116. Application by Public Agencies

Article 9. Contents of Environmental Impact Reports

Section
15140. General
15141. Description of Project
15142. Description of Environmental Setting
15143. Environmental Impact
15144. Organizations and Persons Consulted
15145. Water Quality Aspects
15146. Contents of Final Environmental Impact Report
15147. Degree of Specificity

Article 10. Evaluation of Environmental Impact Reports

Section
15160. Adequate Time for Review and Comment
15161. Review of Environmental Impact Reports
15162. Failure to Comment
15163. Requests for Environmental Documents
15164. Public Participation
15165. Public Hearings
15166. Retention and Availability of Comments

Article 11. EIR Monitor

Section
15180 EIR Monitor

Appendices

Appendix A. Flow Chart
Appendix B. Statutory Authority of State Departments
Appendix C. Notice of Completion Form
Appendix D. Notice of Intent

Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

Article 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000–21174 as amended by Chapter 1154 of the Statutes of 1972 (AB 889). Public agencies shall adopt objectives, criteria, and procedures for the orderly evaluation of projects and the preparation of environmental documents. Such procedures, objectives, and criteria shall be consistent with CEQA and these guidelines.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project. An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved. Economic information may be included in an EIR or may be presented in whatever form the agency desires.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15013. Early Preparation. An EIR is a useful planning tool to enable environmental constraints and opportunities to be considered before project plans are finalized. EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project program or design.

15014. Application. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects. To implement these principles, objectives, criteria, and definitions, public agencies shall specify procedures to be followed which must be consistent with CEQA and these Guidelines.

(b) Until February 15, 1974, any objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental impact reports without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1973. Public agencies may bring their objectives, criteria, and procedures into conformity with the amended guidelines before February 15, 1974.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No.50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 through 21174.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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.

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines.

(b) Final EIR means an EIR containing the information specified in Sections 15141, 15142, 15143, and 15144 of these Guidelines, a section for comments received in the consultation process, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact report prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15029.5 Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project which may have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

History: 1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

15033. Negative Declaration. Negative declaration means a statement by the lead agency briefly presenting the reasons that the project, although not otherwise exempt, would not have a significant effect on the environment and therefore does not require an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15034. Notice of Completion. Notice of Completion means a brief report filed with the Secretary for Resources as soon as a lead agency has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency when it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this report are explained in Section 15085(g).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the state Legislature.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the underlying activity and not to the governmental approval process.

History: 1. Amendment of subsection (a) (1) and new subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15038. Public Agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means a public agency which proposes to undertake or approve a project, but is not the lead agency for the project. It includes all public agencies other than the lead agency which have approval power over the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15040. Significant Effect. Significant effect means a substantial adverse impact on the environment.

Article 5. General Responsibilities.

15050. Public Agencies. All public agencies are responsible for complying with the CEQA, according to these Guidelines. They must develop their own procedures consistent with these Guidelines. Where a public agency is a lead agency and prepares an EIR itself or contracts for the preparation, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary of the Resources Agency. The guidelines shall be officially adopted by the Secretary of the Resources Agency, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. He also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary of the Resources Agency may issue supplements to these Guidelines, containing amendments and/or additions.

15053. Fees. (a) All lead agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the lead agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a fee from members of the public for the actual cost of reproducing a copy of an environmental document requested by the member of the public.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that the activity in question will not have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental impact reports do not apply.

15061. Projects Controlled by State or Local Agencies. (a) When a public agency plans to carry out or approve a project which may have a significant effect on the environment, the lead agency shall prepare environmental documents through its own efforts or by contract unless the project is otherwise exempted by these Guidelines.

(b) Where a project which may have a significant effect on the environment is to be carried out by a nongovernmental person subject to approval, financial support, or some other involvement by a public agency, the lead agency will prepare environmental documents by its own efforts or by contract. However, the agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR by the agency. This information may be submitted in the form of a draft EIR, if the agency desires. If information is provided in the form of a draft EIR, the lead agency may not use the draft EIR as its own without independent evaluation and analysis. The draft EIR which is sent out for public review must reflect the independent judgement of the lead agency. The lead agency should require an applicant to specify to the best of his knowledge which other public agencies will have approval authority over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the lead agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that th EIR shall be prepared by the lead agency.

History: 1. Amendment of subsections (a), (b) and (f) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15062. Private Projects.

History: 1. Repealer filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15063. Federal Projects. (a) In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their comments an EIR setting forth the matters specified in Section 15143 of these Guidelines.

(b) In cases where these Guidelines require the preparation of an EIR by a lead agency and an EIS has been or will be prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an EIR required by these Guidelines, provided that the EIS or the part thereof so used, shall comply with the requirements of these Guidelines. In most cases where the federal EIS is used, discussion of mitigation measures and growth inducing impact will have to be added because these elements are required by CEQA but not by the National Environmental Policy Act.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15064. Lead Agency Principle. Where a project is to be carried out or approved by more than one public agency only one public agency shall be responsible for preparation of environmental documents and it will be the lead agency. Such environmental documents will be prepared by the lead agency in consultation with all other responsible agencies. The lead agency's environmental documents shall be the environmental documentation for all responsible agencies. Such responsible agencies shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

History: 1. (Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15065. Lead Agency Criteria. Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) If the project is to be carried out by a public agency, the lead agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. The lead agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the lead agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with an equal claim to be the lead agency, the public agencies may by agreement designate which agency will be the lead agency.

History: 1. Amendment of subsection (a) and repealer and new subsection (d) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15065.5. Designation of Lead Agency by Office of Planning and Research. (a) In the event that the designation of a lead agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency involved may submit the dispute to the OPR for resolution.

(b) Regulations adopted by OPR for resolving lead agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a lead agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(c) Designation of a lead agency by OPR shall be based on conssideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50).

15066. Consultation with Responsible Agencies. When more than one public agency will be involved in undertaking or approving a project, the lead agency shall consult with all responsible agencies (i.e., all the other public agencies involved in carrying out or approving the project) before completing a draft EIR or Negative Declaration. This early consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all responsible agencies which will issue approvals for the project. After completing the draft EIR or Negative Declaration, the lead agency shall also consult with other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

History: 1. Repealer and new section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15067. Subsequent EIR. Where an EIR has been prepared, no additional EIR need be prepared unless:

(a) Substantial changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in a previous EIR on the project;

(b) There are substantial changes with respect to the circumstances under which the project is to be undertaken, such as a change in the proposed location of the project, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in a previous EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15068. Use of a Single EIR. The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should amend the EIR it prepares for a program to apply it to an individual project with unusual characteristics.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but should in either case comment upon the combined effect.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15070. Ongoing Project. (a) A project as defined in Section 15037(a)(1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any EIR which has been completed or on which substantial work has been performed on or before February 15, 1974, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as adopted on February 3, 1973, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in subsections (a) and (b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects are exempt from the requirements of CEQA, and no EIR is required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and it is anticipated that each public agency will make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature.

(a) Issuance of building permits.
(b) Issuance of business licenses.
(c) Approval of final subdivision maps.
(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial. Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 7. Evaluating Projects

15080. Initial Study. If the project is not part of a class of projects that qualifies for a Categorical Exemption and there is a possibility that the project may have a significant effect on the environment, the lead agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved.

If the project is to be carried out by a nongovernmental person, the lead agency may require such person to submit data and information which will enable the agency to make this determination.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the lead agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may have a significant effect on the environment in connection with most projects where they occur, include a change that:

(1) Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

(2) Has a substantial and demonstrable negative aesthetic effect;

(3) Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

(4) Causes substantial interference with the movement of any resident or migratory fish or wildlife species;

(5) Breaches any published national, state, or local standards relating to solid waste or litter cont[illegible];

(6) Results in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas;
(7) Involves the possibility of contaminating a public water supply system or adversely affecting ground water;
(8) Could cause substantial flooding, erosion or siltation;
(9) Could expose people or structures to major geologic hazards.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15082. Mandatory Findings of Significance. In every case where any of the following conditions are found to exist as a result of a project, the project shall be found to have impacts with a significant effect on the environment:

(a) Impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.

(b) Impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.

(c) Impacts for a project which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15083. Negative Declaration. (a) A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the lead agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) A Negative Declaration must include a brief description of the project as proposed, a finding that the project will not have a significant effect on the environment, a brief statement of reasons to support the findings, and a statement indicating who prepared the initial study and where a copy of it may be obtained. The Negative Declaration should normally not exceed one page in length.

(c) The Negative Declaration shall be made available to the public with sufficient time before the project is approved to provide an opportunity for members of the public to respond to the finding.

(d) After making a decision to carry out or approve the project, the lead agency shall file a Notice of Determination with a copy of the Negative Declaration attached. The Notice of Determination shall include the decision of the agency to approve or disapprove the project, the determination of the agency whether the project will have a significant effect on the environment, and a statement that no EIR has been prepared pursuant to the provisions of CEQA.

(1) If the lead agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the lead agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15084. Decision to Prepare an EIR. If the lead agency finds, after an initial study, that the project may have a significant effect on the environment, the lead agency must prepare or cause to be prepared an Environmental Impact Report.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15085. EIR Process. The following steps shall be followed after the lead agency decides to prepare an EIR.

(a) If the project is to be carried out by a nongovernmental person, the lead agency may require such person to submit data and information necessary to enable the lead agency to prepare the EIR. This information may be transmitted in the form of a draft EIR. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. Use of a draft EIR submitted by an applicant is discussed in Section 15061(b).

(b) The content of an EIR is described in Article 9 of these Guidelines. Each element of an EIR must be covered, and these elements should be separated into distinct selections. Before completing a draft EIR consisting of the information specified in Section 15141, 15142, and 15143 of these Guidelines, the lead agency should consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious form later in the review process. After completing a draft EIR, the lead agency must consult with, and obtain the comments of, any public agency which has jurisdiction by law with respect to the project and may consult with any person who has special expertise with respect to any environmental impact involved. Opportunity for comments from the general public should be provided.

(c) As soon as the draft EIR is completed, but before copies are sent out for review, an official notice stating that the draft EIR has been completed must be filed with the Secretary for the Resources Agency. The notice shall include a brief description of the project, its proposed location, and an address where copies of the EIR are available. This notice shall be referred to as a Notice of Completion. A form for this notice is provided in the Appendices. The Notice of Completion will provide the basis for information published by the Secretary for Resources in an EIR Monitor. Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, a Notice of Intent will be completed and filed with the State Clearinghouse. The Notice of Intent will serve as the Notice of Completion, and no Notice of Completion need be sent to the Resources Agency. A form for the Notice of Intent is shown in Appendix D.

(d) The lead agency shall evaluate comments received from persons who reviewed the draft EIR.

(e) The lead agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

(f) The final EIR shall be presented to the decision-making body of the lead agency. The lead agency shall certify that the final EIR has been completed in compliance with CEQA and the state guidelines and that the decision-making body or administrative official having final approval authority over the project has reviewed and considered the information contained in the EIR.

(g) After making a decision on the project, the lead agency shall file a notice of action taken on the project. This notice shall be referred to as a Notice of Determination. Such notice shall include (1) the decision of the agency to approve or disapprove the project, (2) the determination of the agency whether the project will or will not have a significant effect on the environment, and (3) a statement that an EIR has been prepared pursuant to the provisions of CEQA.

(1) If the lead agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the lead agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located.

(h) If the lead agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15086. EIR Combined with Existing Planning and Review Process. To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process being used by each responsible agency. The lead agency shall include the EIR as a part of the regular project report where such a report is used in the existing review and budgetary process.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required by these Guidelines. Additional notices may include the determination that a project is categorically exempt, that a project is covered by the emergency exemption or the ministerial exemption, or that an activity is not covered by the act at all. Such notice should include reference to the documentation on which the determination is based.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15088. Statement of Overriding Considerations. If a public agency decides to approve a project for which serious adverse environmental consequences have been identified in an EIR, the agency may wish to make a statement identifying the other interests that warrant approval in its point of view. If such a statement is made, it should be included in the record of the project approval and may be attached to the Notice of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of an EIR.

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets (within already established rights-of-way) sidewalks, gutters, bicycle and pedestrian trails, and similar facilities;

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition or 2500 square feet, whichever is less;

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;
(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);
(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;
(j) Fish stocking by the California Department of Fish and Game;
(k) Division of existing multiple family rental units into condominiums;
(*l*) Demolition and removal of buildings and related structures except where they are of historical, archaeological or architectural significance as officially designated by Federal, State or local governmental action.

History: 1. Amendment of subsections (b), (e), (f) and (*l*) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%;
(b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new, small facilities or structures and installation of small new equipment and facilities including but not limited to:
(a) Single family residences not in conjunction with the building of two or more such units;
(b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;
(c) Stores, offices, and restaurants if designed for an occupant load of 20 persons of less, if not in conjunction with the building of two or more such structures;
(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction;
(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15104. Class 4: Minor Alterations to Land. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15105. Class 5: Alterations in Land Use Limitations. Class 5 consists of minor alterations in land use limitations, except zoning, including but not limited to:

(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel nor in any change in land use or density;

(b) Issuance of minor encroachment permits.

15106. Class 6: Information Collection. Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15108. Class 8: Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15109. Class 9: Inspections. Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10: Loans. Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15111. Class 11: Accessory Structures. Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots.

15112. Class 12: Surplus Government Property Sales. Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report of June 1, 1973.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15113. Relation to Ministerial Projects. Section 21080 of the Public Resources Code as added by Chapter 1154, Statutes of 1972, exempts all ministerial projects and activities of public agencies from application of the CEQA. The matter of what is or is not a ministerial project is up to the determination of each public agency, based on an examination of the applicable laws and ordinances. Thus, while the Categorical Exemptions listed in this subsection contain classes or examples of projects which in many cases will be ministerial, the inclusion of them is in no way intended to imply any finding here that, in any particular jurisdiction, they are ministerial or discretionary. The exemptions, naturally, only apply where the project in question is found to be discretionary.

15114. Exception by Location. Class 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, EXCEPT where the project may impact on an environmental resource of hazardous or critical concern as may be hereafter designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies. Moreover, all exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15115. Revisions to List of Categorical Exemptions. Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15116. Application by Public Agencies. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15114.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 9. Contents of Environmental Impact Reports

15140. General. Environmental impact reports shall contain the information outlined in this article.

15141. Description of Project. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals and supporting public service facilities.

History: 1. Amendment of subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15142. Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

15143. Environmental Impact. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs.

(a) **The Environmental Impact of the Proposed Action:** Describe the direct and indirect impacts of the project on the environment, giving due consideration to both the short-term and long-term effects. It should include specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) **Any Adverse Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented:** Describe any adverse impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Do not neglect impacts on any aesthetically valuable surroundings, or on human health.

(c) **Mitigation Measures Proposed to Minimize the Impact:** Describe any mitigation measures written into the project plan to reduce significant environmentally adverse impacts to insignificant levels, and the basis for considering these levels acceptable. Where a particular mitigation measure has been chosen from among several alternatives should be discussed and reasons should be given for the choice made.

(d) **Alternatives to the Proposed Action:** Describe any known alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. Attention should be paid to alternatives capable of substantially reducing or eliminating any environmentally adverse impacts, even if these alternatives substantially impede the attainment of the project objectives, and are most costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. With respect to water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards, reference to the certification should be made.

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of the Draft EIR containing the elements described in Sections 15141, 15142, and 15143 of these Guidelines, a section listing the organizations and persons consulted and containing the comments received through the consultation process described in Article 10, either verbatim or in summary, and the response of the lead agency to the significant environmental points raised in the review and consultation process.

(b) The response of the lead agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50)

15147. Degree of Specificity. The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on projects such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

(c) The requirements for an EIR on a local general plan or element thereof will be satisfied by the general plan or element document, i.e., no separate EIR will be required, if: (1) the general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines and (2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment. The lead agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify reviewing agencies of the time periods.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days except in unusual situations. While state and local agencies are not bound by federal guidelines for implementing the National Environmental Policy Act, the time limits in the federal guidelines provide an example that may be followed in some situations. The federal guidelines require at least 90 days for review of a draft EIR and another 30 days for the review of a final EIR. Review periods of this length may be desirable for some large projects, but shorter periods may be provided where the shorter period will still allow adequate review.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15161. Review of Environmental Impact Reports. (a) Public agencies must develop procedures to ensure that lead agencies obtain and receive adequate comments on their EIRs from public agencies which have jurisdiction by law with respect to the project. Such procedures should include provisions for consultation with persons who have special expertise in environmental matters. It is suggested that public agencies utilize existing state, and regional or local clearinghouses to distribute EIRs and other environmental documents to appropriate agencies.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have legal jurisdiction and/or special expertise with respect to various projects and project locations. Appendix B to these Guidelines identifies state agencies which have legal jurisdiction over, or special expertise in, various impacts. This could be the basis for a part of such listings. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the act to provide decision-makers with useful information about such factors.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the project sponsor with the name of a contact person who is available for later consultation should this prove necessary.

(e) EIRs and Negative Declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. When EIRs are submitted to the State Clearinghouse, the review periods set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse.

History: 1. Amendment of subsections (a) and (b) and new subsection (e) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15162. Failure to Comment. If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Responsible Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

15163. Requests for Environmental Documents. The Responsible Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

15164. Public Participation. While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15165. Public Hearings. (a) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

History: 1. Amendment of subsections (a) and (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15166. Retention and Availability of Comments. Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the Final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

Article 11. EIR Monitor

15180. EIR Monitor. The Secretary for Resources will provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIRs and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

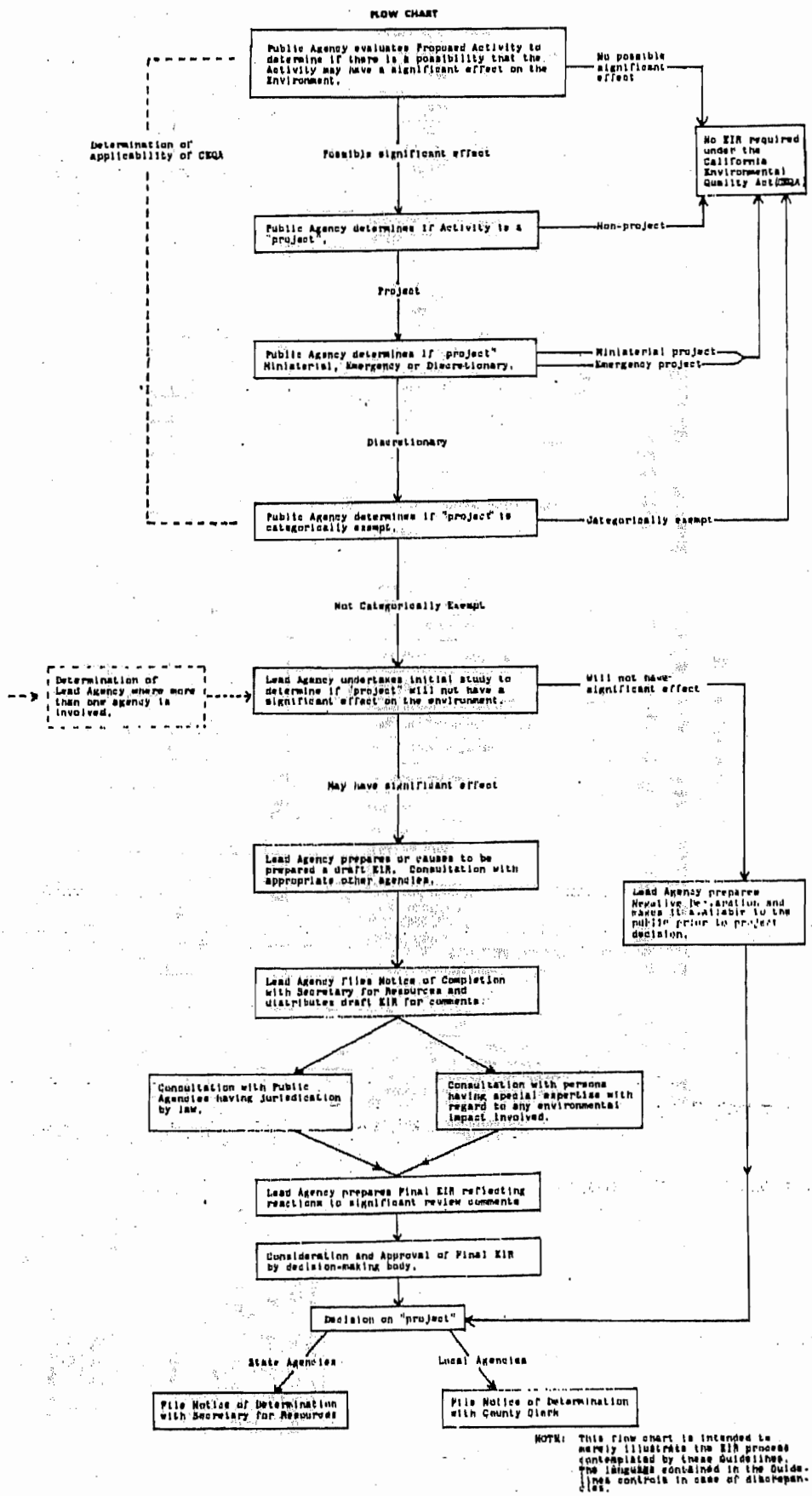
History: 1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

APPENDICES

Appendix A	Flow Chart
Appendix B	Statutory Authority of State Departments
Appendix C	Notice of Completion Form
Appendix D	Notice of Intent.

Appendix A

FLOW CHART



NOTE: This flow chart is intended to merely illustrate the EIR process contemplated by these Guidelines. The language contained in the Guidelines controls in case of discrepancies.

History: 1. Amendment of Appendix A filed 10-6-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix B
STATUTORY AUTHORITY OF STATE DEPARTMENTS IN AREAS OF ENVIRONMENTAL CONCERN

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
		Air quality and air pollution control	Chemical contamination and food products	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	Congestion in urban areas, housing and building displacement	Disease control	Electric energy generation and supply	Environmental effects with special impact in low-income neighborhoods	Flood plains and watersheds	Food additives and food sanitation	Herbicides	Historic and Archeological sites	Human ecology	Microbiological contamination	Mineral land reclamation	Natural gas energy development generation and supply	Navigable airways	Navigable waterways	Noise control and abatement	Parks, forests, trees and outdoor recreation areas	Pesticides	Radiation and radiological health	Regional comprehensive planning	Rodent control	Sanitation and waste systems	Shellfish sanitation	Soil and plant life, sedimentation, erosion and hydrologic conditions	Toxic materials	Transportation and handling of hazardous materials	Water quality and water pollution control	Fish and wildlife	Activities with special impact on regional jurisdictions	Water project formulation	Geothermal energy	Oil and petroleum development, generation and supply	Statewide land use patterns	Open Space policy	Statewide overview—cumulative impact of separate projects
AGRICULTURE AND SERVICES AGENCY																																						
Food and Agriculture		*/1	X			X			X	X	X		/2	X							X				/3		X	X	/4	X	/5						X
BUSINESS AND TRANSPORTATION AGENCY																																						
Aeronautics		X															X		X				Y															
CHP		/6																	X										X									
Corporations																																						
DMV		X																																			
H CD					X			X															X															
Office of Transp. Planning & Research					X			X				X																X										
Public Works								X	X														X															
Real Estate					X			X	X														X															
Savings and Loan																							X															

* See Appendix B footnotes.

	1 Air quality and air pollution control	2 Chemical contamination and food products	3 Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	4 Congestion in urban areas, housing and building displacement	5 Disease control	6 Electric energy generation and supply	7 Environmental effects with special impact in low-income neighborhoods	8 Flood plains and watersheds	9 Food additives and food sanitation	10 Herbicides	11 Historic and Archeological sites	12 Human ecology	13 Microbiological contamination	14 Mineral land reclamation	15 Natural gas energy development generation and supply	16 Navigable airways	17 Navigable waterways	18 Noise control and abatement	19 Parks, forests, trees and outdoor recreation areas	20 Pesticides	21 Radiation and radiological health	22 Regional comprehensive planning	23 Rodent control	24 Sanitation and waste systems	25 Shellfish sanitation	26 Soil and plant life, sedimentation, erosion and hydrologic conditions	27 Toxic materials	28 Transportation and handling of hazardous materials	29 Water quality and water pollution control	30 Fish and wildlife	31 Activities with special impact on regional jurisdictions	32 Water project formulation	33 Geothermal energy	34 Oil and petroleum development, generation and supply	35 Statewide land use patterns	36 Open Space policy	37 Statewide overview—cumulative impact of separate projects
HUMAN RELATIONS AGENCY																																					
Public Health	X	X	/7	/8	X	X	/9		X	X		X	X			/10		X		X	X	/11	X	X	X		X	X	X	/12	/13						
RESOURCES AGENCY																																					
Air Resources Board	X			/24		X						X				X						/24										/24	/24			/24	
Colorado River Board		/14	/14		/14	/14		/14		/14			/14				/14		/14		/14	/14		/14		/14	/14		/14	/14	/14	/14	/14				
Conservation	X		X		/22	/23		X		/22				X	X				X	/22		X	/22	X		X		X	X			/23	X	X	X	X	
Fish and Game		X	X		X	X		X		X		X	X	X	/15	/16	X	/17	X	X	X	X	X	/18	X	X	X		X	X		X	X	X	X	X	
NOD			X			X											X		X			X							X			X					
Parks and Recreation			X			X	/19	X		X	X	X		X					X	X		X	X			X	X			X	X	X					
State Lands Division			X					X			X			X	X		X		X			X				X							X	X	X	X	
State Reclamation Board								/20									/20														/20	/20					
State Water Resources Control Board	X	X	X	/21	X					X			X							X		X		X	X	X	X	X	X	/21		X	/21	/21			
Water Resources			X			X		X												X		X		X		X			X		X	X	X				
OFFICE OF PLANNING AND RESEARCH																																			X	X	X
COUNCIL ON INTERGOVERNMENTAL RELATIONS																						X															

NOTE: The following entities will also receive reports for review but their areas of environmental concern are not yet established: San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency and Wildlife Conservation Board.

History: 1. Amendment of Appendix B filed 12-15-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

APPENDIX B FOOTNOTES

No.

1. **Agriculture**—(1) Air quality and air pollution control
   Effects on plants and animals
2. **Agriculture**—(12) Human Ecology
   Protection of food and fibre
3. **Agriculture**—(24) Sanitation and waste systems
   Agriculture, dairy and feed lot systems
4. **Agricultural**—(28) Transportation and handling of hazardous materials
   As pertains to transportation, handling, storage and decontamination of pesticides.
5. **Agriculture**—(30) Fish and wildlife
   Pesticide effects, predatory animal control, bird control
6. **CHP**—(1) Air quality and air pollution control
   Enforcement of motor vehicle regulations
7. **Public Health**—(3) Coastal areas, wetlands, etc.
   Beach sanitation, water pollution, solid waste and mosquito control
8. **Public Health**—(4) Congestion in urban areas, housing and building displacement
   Pertains to health component
9. **Public Health**—(7) Environmental effects with special impact in low-income neighborhoods
   Most of these are strongly related to health
10. **Public Health**—(16) Navigable airways
    Pertains to noise
11. **Public Health**—(22) Regional comprehensive planning
    Pertains to personal and environmental health components
12. **Public Health**—(30) Wildlife
    As it may pertain to human health hazards
13. **Public Health**—(31) Activities with special impact on regional jurisdictions
    Pertains to comprehensive health planning
14. **Colorado River Board**—(2), (3), (5), (6), (8), (10), (13), (17), (19), (21), (22), (24), (26), (27), (29), (30), (31), (32) and (33).
    As pertains to the Colorado, New and Alamo Rivers
15. **Fish and Game**—(15) Natural gas energy development, generation and supply
    As field development and distribution systems may affect fish and wildlife
16. **Fish and Game**—(16) Navigable airways
    As may affect migrating and resident wildlife
17. **Fish and Game**—(18) Noise control and abatement
    As excessive noise may affect wildlife
18. **Fish and Game**—(24) Sanitation and waste systems
    As water quality may affect fish and wildlife
19. **Parks and Recreation**—(7) Environmental effects with special impact in low-income neighborhoods
    In impacted areas only
20. **Reclamation Board**—(8), (17), (31) and (32)
    In areas of Board's jurisdiction only
21. **State Water Resources Control Board**—(4), (30), (33) and (34)
    As may pertain to water quality
22. **Conservation**—(5), (10), (20) and (23)
    With respect to forest land

Appendix D

NOTICE OF INTENT

THIS FORM SERVES AS THE NOTICE OF COMPLETION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IF A REVIEW IS REQUIRED AT THE STATE LEVEL ON THE ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION

(NOTIFY BOTH)

☐ STATE CLEARINGHOUSE
OFFICE OF THE GOVERNOR
OFFICE OF PLANNING AND RESEARCH
1400 10TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-0613

☐ METROPOLITAN CLEARINGHOUSE

STATE OF CALIFORNIA
FORM CDR-1 (11-73)

STATE CLEARINGHOUSE NUMBER (SCH. NO) (1-8)	TRANSACTION (9)

SEE INSTRUCTIONS ON REVERSE SIDE

01	SPONSOR (OR AGENCY RESPONSIBLE FOR REPORT) (12-45)	DIVISION (46-74)		DATE THIS FORM SUBMITTED (75-80) MO. DAY YEAR	
02	PROJECT TITLE (12-71)			AGENCY ACTION DATE (SEE INST.) (75-80) MO. DAY YEAR	
03	ADDRESS (12-45)	CITY (46-60)	COUNTY (61-75)		ZIP CODE (76-80)
04	CONTACT PERSON (12-36)	TITLE (37-65)	AREA CODE (66-68)	PHONE (69-75)	EXT (76-80)
05	(12-71) PROJECT DESCRIPTION OF NATURE, PURPOSE, BENEFICIARIES			ON THESE 6 LINES CAPSULIZE THE PROJECT DESCRIPTION. YOU ARE ENCOURAGED TO ATTACH ADDITIONAL INFORMATION ON THE PROJECT FOR THE BENEFIT OF THE REVIEWER. IF YOU DO, THE STATE CLEARINGHOUSE WILL NEED 25 COPIES OF ANY ATTACHMENTS. PLEASE CHECK WITH THE METROPOLITAN CLEARINGHOUSE FOR THEIR SUBMISSION REQUIREMENTS.	
06	(12-71)				
07	(12-71)				
08	(12-71)				
09	(12-71)				
10	(12-71)				
11	PROJECT LOCATION CITY (12-45)		PROJECT LOCATION COUNTY (46-79)		

12	FEDERAL FUNDS		MATCHING FUNDS		(45-56) OTHER NON-FEDERAL FUNDS	(57-66) TOTAL FUNDS
	GRANT (12-20)	OTHER (21-29)	STATE (30-38)	LOCAL (39-47)		

13	SOURCE OF OTHER FEDERAL FUNDS (12-34)	FED. CATALOG NO.	SOURCE OF STATE MATCH (35-57)	SOURCE OF OTHER NON-FED. FUNDS (58-80)
14	FUNDING AGENCY PROGRAM TITLE (12-80)			FEDERAL CATALOG NUMBER
15	FUNDING AGENCY NAME (12-45)		SUB-AGENCY (46-79)	

16 CONGRESSIONAL DISTRICT (12-19): 12-13 | 14-15 | 16-17 | 18-19 | 20-21 | 22-23
SENATE DISTRICT (24-35): 24-25 | 26-27 | 28-29 | 30-31 | 32-33 | 34-35
ASSEMBLY DISTRICT (36-59): 36-37 | 38-39 | 40-41 | 42-43 | 44-45 | 46-47 | 48-49 | 50-51
STATE-WIDE (52): 52 ☐ YES ☐ NO
COUNTY-WIDE (54): 54 ☐ YES ☐ NO
MULTI-COUNTY (56): 56 ☐ YES ☐ NO 57

17 TYPE OF ACTION:
- ☐ 12 NEW
- ☐ 13 MODIFICATION IN CURRENT GRANT • CUR. SCH. NO. _____ (14-21)
- ☐ 22 CONTINUATION GRANT SCH. NO. FROM PRE. YR. _____ (23-30)
- ☐ 31 RESUBMITTAL IF A PRE APPLICATION • PRE. SCH. NO. _____ (32-39)

REQUESTED FUND START _____ (40-45) MON • DAY • YEAR
FUNDS DURATION _____ MOS (46-48)
EST. PROJECT START _____ (49-54) MON • DAY • YEAR
EST. PROJECT DURATION _____ MOS. (55-57)

PROJECT SUBJECT TO REVIEW UNDER: (CHECK AS MANY AS APPROPRIATE)
- ☐ 58 U.S. OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-95
- ☐ 59 MODEL CITIES PLANNED VARIATION
- ☐ 60 NATIONAL ENVIRONMENTAL POLICY ACT
- ☐ 61 CALIFORNIA ENVIRONMENTAL QUALITY ACT
- ☐ 62 SUBDIVISION REVIEW (SECTION 11550.1 OF BUSINESS & PROFESSIONS CODE)
- ☐ 63 STATE ADMINISTRATIVE MANUAL (SEC. 0911)
- ☐ 64 HEALTH RELATED (SEC. 437.5 OF HEALTH AND SAFETY CODE)
- ☐ 65 LEASE OF STATE LANDS
- ☐ 66 OTHER: _____

IF PROJECT IS PHYSICAL IN NATURE OR REQUIRES AN ENVIRONMENTAL DOCUMENT, LIST THE U.S. GEOLOGICAL SURVEY QUADRANGLE MAP IN WHICH THE PROJECT IS LOCATED.
1. _____
2. _____
3. _____
4. _____
5. _____

DOES YOUR AGENCY HAVE A CIVIL RIGHTS AFFIRMATIVE ACTION POLICY AND PLAN? YES ☐ 67 NO ☐ 68

WILL THE PROJECT REQUIRE RELOCATION? YES ☐ 69 NO ☐ 70

18 IS ENVIRONMENTAL DOCUMENT REVIEW REQUIRED? YES ☐ 12 NO ☐ 13

IF YES –
- ☐ 14 ENVIRONMENTAL IMPACT STATEMENT (REPORT) ATTACHED ☐ 15 DRAFT EIR ☐ 16 FINAL EIR
- ☐ 17 NEGATIVE DECLARATION ATTACHED
- ☐ 18 NONE ATTACHED • DOCUMENT WILL BE FORWARDED ON APPROXIMATELY _____ MON _____ DAY _____ YEAR (19-24)

IF NO –
- ☐ 25 FEDERAL PROGRAM DOES NOT REQUIRE AN ENVIRONMENTAL DOCUMENT
- ☐ 26 PROJECT EXEMPT UNDER STATE CATEGORICAL EXEMPTION. CLASS _____ (27-28)

19 LIST LOCAL, COUNTYWIDE, REGIONAL, STATE OR FEDERAL AGENCIES WITH WHICH COORDINATION HAS BEEN ESTABLISHED.

SPONSOR'S PROJECT I.D. NUMBER (OPTIONAL) (12-21)

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15014. Application. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects. To implement these principles, objectives, criteria, and definitions, public agencies shall specify procedures to be followed which must be consistent with CEQA and these Guidelines.

(b) Until February 15, 1974, any objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental impact reports without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1973. Public agencies may bring their objectives, criteria, and procedures into conformity with the amended guidelines before February 15, 1974.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No.50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 through 21174.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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.

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines.

(b) Final EIR means an EIR containing the information specified in Sections 15141, 15142, 15143, and 15144 of these Guidelines, a section for comments received in the consultation process, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact report prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15029.5 Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project which may have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

History: 1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

15033. Negative Declaration. Negative declaration means a statement by the lead agency briefly presenting the reasons that the project, although not otherwise exempt, would not have a significant effect on the environment and therefore does not require an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15034. Notice of Completion. Notice of Completion means a brief report filed with the Secretary for Resources as soon as a lead agency has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency when it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this report are explained in Section 15085(g).

15035.5. Notice of Exemption. Notice of exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a deterination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b).

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any EIR which has been completed or on which substantial work has been performed on or before February 15, 1974, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as adopted on February 3, 1973, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in subsections (a) and (b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects are exempt from the requirements of CEQA, and no EIR is required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and it is anticipated that each public agency will make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature.

(a) Issuance of building permits.
(b) Issuance of business licenses.
(c) Approval of final subdivision maps.
(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial. Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15074. Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines.

(b) Final EIR means an EIR containing the information specified in Sections 15141, 15142, 15143, and 15144 of these Guidelines, a section for comments received in the consultation process, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact report prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15029.5 Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project which may have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

History: 1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer.

15033. Negative Declaration. Negative declaration means a statement by the lead agency briefly presenting the reasons that the project, although not otherwise exempt, would not have a significant effect on the environment and therefore does not require an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15034. Notice of Completion. Notice of Completion means a brief report filed with the Secretary for Resources as soon as a lead agency has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency when it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this report are explained in Section 15085(g).

15035.5. Notice of Exemption. Notice of exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b).

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).

2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

Appendix D

NOTICE OF INTENT

This form serves as the notice of completion under the California Environmental Quality Act if a review is required at the state level on the environmental impact report or negative declaration.

(NOTIFY BOTH)
☐ STATE CLEARINGHOUSE — OFFICE OF THE GOVERNOR, OFFICE OF PLANNING AND RESEARCH, 1400 10TH STREET, SACRAMENTO, CALIFORNIA 95814, (916) 445-0613
☐ METROPOLITAN CLEARINGHOUSE

STATE OF CALIFORNIA
FORM OPR-1 (11-73)

STATE CLEARINGHOUSE NUMBER (SCH. NO.) (1-6)	TRANSACTION (7)

SEE INSTRUCTIONS ON REVERSE SIDE

01	SPONSOR OR AGENCY RESPONSIBLE FOR REPORT (12-45)	DIVISION (46-75)	DATE THIS FORM SUBMITTED (76-80) MO. DAY YEAR
02	PROJECT TITLE (12-75)		AGENCY ACTION DATE (081) (082) (79-80) MO. DAY YEAR
03	ADDRESS (12-45)	CITY (46-60) / COUNTY (61-75)	ZIP CODE (76-80)
04	CONTACT PERSON (12-36)	TITLE (37-60) / AREA CODE (61-63)	PHONE (64-75) / EXT (76-80)
05	(12-71) PROJECT DESCRIPTION OF NATURE, PURPOSE, BENEFICIARIES		ON THESE 6 LINES CAPSULIZE THE PROJECT DESCRIPTION. YOU ARE ENCOURAGED TO ATTACH ADDITIONAL INFORMATION ON THE PROJECT FOR THE BENEFIT OF THE REVIEWER. IF YOU DO, THE STATE CLEARINGHOUSE WILL NEED 25 COPIES OF ANY ATTACHMENTS. PLEASE CHECK WITH THE METROPOLITAN CLEARINGHOUSE FOR THEIR SUBMISSION REQUIREMENTS.
06	(12-71)		
07	(12-71)		
08	(12-71)		
09	(12-71)		
10	(12-71)		
11	PROJECT LOCATION CITY (12-45)	PROJECT LOCATION COUNTY (46-75)	

12	FEDERAL FUNDS: GRANT (12-20)	OTHER (21-29)	MATCHING FUNDS: STATE (30-38)	LOCAL (39-47)	OTHER NON-FEDERAL FUNDS (48-56)	TOTAL FUNDS (57-65)

13	SOURCE OF OTHER FEDERAL FUNDS (12-34) / FED. CATALOG NO.	SOURCE OF STATE MATCH. (35-57)	SOURCE OF OTHER NON-FED. FUNDS (58-80)
14	FUNDING AGENCY PROGRAM TITLE (12-60)		FEDERAL CATALOG NUMBER
15	FUNDING AGENCY NAME (12-45)	SUB-AGENCY (46-75)	

16 CONGRESSIONAL DISTRICT (12-19): 10-11 | 12-13 | 14-15 | 16-17 | 18-19 | 20-21 | 22-23
SENATE DISTRICT (24-33): 24-25 | 26-27 | 28-29 | 30-31 | 32-33
ASSEMBLY DISTRICT (34-55): 34-35 | 36-37 | 38-39 | 40-41 | 42-43 | 44-45 | 46-47 | 48-49 | 50-51
STATE-WIDE (56-57) | COUNTY-WIDE (58-59) | MULTI-COUNTY (60-61)

17 TYPE OF ACTION:
☐ 12 NEW
☐ 13 MODIFICATION IN CURRENT GRANT - CUR. SCH. NO. _____ (14-21)
☐ 22 CONTINUATION GRANT SCH. NO. FROM PRE. YR. _____ (23-30)
☐ 31 RESUBMITTAL IF A PRE APPLICATION - PRE. SCH. NO. _____ (32-39)

REQUESTED FUND START _____ (40-45) MON - DAY - YEAR
FUNDS DURATION _____ MOS. (46-48)
EST. PROJECT START _____ (49-54) MON - DAY - YEAR
EST. PROJECT DURATION _____ MOS. (55-57)

PROJECT SUBJECT TO REVIEW UNDER: (CHECK AS MANY AS APPROPRIATE)
☐ 58 U.S. OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-95
☐ 59 MODEL CITIES PLANNER VARIATION
☐ 60 NATIONAL ENVIRONMENTAL POLICY ACT
☐ 61 CALIFORNIA ENVIRONMENTAL QUALITY ACT
☐ 62 SUBDIVISION REVIEW (SECTION 11550 1 OF BUSINESS & PROFESSIONS CODE)
☐ 63 STATE ADMINISTRATIVE MANUAL (SEC. 09111)
☐ 64 HEALTH RELATED (SEC. 437.5 OF HEALTH AND SAFETY CODE)
☐ 65 LEASE OF STATE LANDS
☐ 66 OTHER: _____

IF PROJECT IS PHYSICAL IN NATURE OR REQUIRES AN ENVIRONMENTAL DOCUMENT, LIST THE U.S. GEOLOGICAL SURVEY QUADRANGLE MAP IN WHICH THE PROJECT IS LOCATED:
1. _____
2. _____
3. _____
4. _____
5. _____

DOES YOUR AGENCY HAVE A CIVIL RIGHTS AFFIRMATIVE ACTION POLICY AND PLAN? YES ☐ 67 NO ☐ 68

WILL THE PROJECT REQUIRE RELOCATION? YES ☐ 69 NO ☐ 70

18 IS ENVIRONMENTAL DOCUMENT REVIEW REQUIRED? YES ☐ 12 NO ☐ 13

IF YES -
☐ 14 ENVIRONMENTAL IMPACT STATEMENT (REPORT) ATTACHED ☐ 15 DRAFT EIR ☐ 16 FINAL EIR
☐ 17 NEGATIVE DECLARATION ATTACHED
☐ 18 NONE ATTACHED - DOCUMENT WILL BE FORWARDED ON APPROXIMATELY _____ MON _____ DAY _____ YEAR (19-24)

IF NO -
☐ 25 FEDERAL PROGRAM DOES NOT REQUIRE AN ENVIRONMENTAL DOCUMENT
☐ 26 PROJECT EXEMPT UNDER STATE CATEGORICAL EXEMPTION. CLASS _____ (27-28)

19 LIST LOCAL, COUNTYWIDE, REGIONAL, STATE OR FEDERAL AGENCIES WITH WHICH COORDINATION HAS BEEN ESTABLISHED.

SPONSOR'S PROJECT I.D. NUMBER (OPTIONAL) (12-21) — SIGNATURE OF AUTHORIZED REPRESENTATIVE

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix E

Notice of Exemption

TO: State of California
The Resources Agency
Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, CA 95814

FROM:

Project Title:

Project Location—Specific:

Project Location—City

Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project:

Name of Person or Agency Carrying Out Project:

Exempt Status: (Check one)

__Ministerial (Sec. 15073)
__Declared Emergency (Sec. 15071(a))
__Emergency Project (Sec. 15071 (b) and (c))
__Categorical Exemption. State type and section number:

Reasons why project is exempt:

Contact Person Area Code Telephone Extension

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?
   Yes__ No__

Date Filed:

Signature

Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

History: 1. New Appendix E filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

15014. Application. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects. To implement these principles, objectives, criteria, and definitions, public agencies shall specify procedures to be followed which must be consistent with CEQA and these Guidelines.

(b) Until February 15, 1974, any objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental impact reports without being brought into conformity with the amended guidelines before February 15, 1974.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No.50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 through 21174.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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.

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

§ 15001
§ 15005
§ 15014
§ 15022
§ 15027
§ 15028
§ 15029.6
§ 15035
§ 15035.5
§ 15037
§ 15050
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§ 15100.1
§ 15100.2
§ 15100.3
§ 15100.4
§ 15101
§ 15112
§ 15113
§ 15114
§ 15115
§ 15116
§ 15143
§ 15145
§ 15146
§ 15147
§ 15148
§ 15160
§ 15161
§ 15161.5
§ 15162
§ 15163

Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

15001. Short Title. These Guidelines may be cited as the "State EIR Guidelines."

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. These Guidelines are binding on all public agencies.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project. An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved. Economic information may be included in an EIR or may be presented in whatever form the agency desires.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15013. Early Preparation. An EIR is a useful planning tool to enable environmental constraints and opportunities to be considered before project plans are finalized. EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project program or design.

15014. Applicability. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects.

(b) Until April 1, 1975, the objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental documents without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1974. However, the amendment to Section 15143(c) dealing with mitigation measures, must be complied with effective January 7, 1975, regardless of whether its provisions have been included in the procedures being used by a public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).
4. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 et seq.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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.

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act, and may mean either a draft or a final EIR.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines. Where a Lead Agency consults with Responsible Agencies in the preparation of a draft EIR, the draft EIR shall also contain the information specified in Section 15144.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15029. Feasible. Feasible means capable of being accomplished in a successful manner by reasonably available, economic, and workable means.

15029.5 Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15029.6. Jurisdiction by Law. (a) Jurisdiction by law means the authority of any public agency (1) to grant a permit for or provide funding for the project in question, or (2) to exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county is the site of the project, the area in which the major environmental effects will occur, and/or the area in which reside those citizens most directly concerned by any such environmental effects.

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15083(d) and 15085(h). A copy of this notice appears in Appendix D.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.5. Notice of Exemption. Notice of Exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b). A copy of this notice appears in Appendix E.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, which has a potential for physical impact on the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the State Legislature other than requests by state agencies for authorization or funding for projects independently from the Budget Act.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the underlying activity and not to the governmental approval process.

History: 1. Amendment of subsection (a) (1) and new subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15038. Public Agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means a public agency which proposes to undertake or approve a project, but is not the lead agency for the project. It includes all public agencies other than the lead agency which have approval power over the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15040. Significant Effect. Significant effect means a substantial adverse impact on the environment.

Article 5. General Responsibilities.

15050. Public Agency Implementation. (a) Each public agency is responsible for complying with CEQA and these Guidelines. Each public agency must develop its own procedures consistent with these Guidelines.

(b) Where a public agency is a Lead Agency and prepares an EIR itself, contracts for the preparation, or accepts data and information in the form of a draft EIR from an applicant, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary for Resources. The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees. (a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15061. Projects Controlled by State or Local Agencies. (a) When a public agency plans to carry out or approve a project which may have a significant effect on the environment, the Lead Agency shall prepare environmental documents through its own efforts or by contract unless the project is otherwise exempted by these Guidelines.

(b) Where a project which may have a significant effect on the environment is to be carried out by a non-governmental person subject to approval, financial support, or some other involvement by a public agency, the Lead Agency will prepare environmental documents by its own efforts or by contract. However, the Lead Agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR by the Agency. This information may be submitted in the form of a draft EIR, if the Agency desires. If information is provided in the form of a draft EIR, the Lead Agency may not use the draft EIR as its own without independent evaluation and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency should require an applicant to specify to the best of his knowledge which other public agencies will have jurisdiction by law over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the Lead Agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that th EIR shall be prepared by the lead agency.

History: 1. Amendment of subsections (a), (b) and (f) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15062. Private Projects.

History: 1. Repealer filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15063. Federal Projects. (a) In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their comments a discussion of the matters specified in Section 15143 of these Guidelines.

(b) In cases where these Guidelines require the preparation of an EIR by a Lead Agency and an EIS has been or will be prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an EIR required by these Guidelines, provided that the EIS or the part thereof so used, shall comply with the requirements of these Guidelines. In cases where the federal EIS is used, discussion of mitigation measures and growth inducing impact will have to be added or supplemented if the EIS does not include an adequate discussion of these elements.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15064. Lead Agency Principle. Where a project is to be carried out or approved by more than one public agency only one public agency shall be responsible for preparation of environmental documents and it will be the Lead Agency. Such environmental documents will be prepared by the Lead Agency in consultation with all other responsible agencies. The Lead Agency's environmental documents shall be the environmental documentation for all responsible agencies. Such responsible agencies shall consider the Lead Agency's EIR or negative declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

History: 1. (Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15065. Lead Agency Criteria. Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with an equal claim to be the Lead Agency, the public agencies may by agreement designate which agency will be the Lead Agency.

History: 1. Amendment of subsection (a) and repealer and new subsection (d) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (d) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1)

15065.5. Designation of Lead Agency by Office of Planning and Research. (a) In the event that the designation of a lead agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency involved may submit the dispute to the OPR for resolution.

(b) Regulations adopted by OPR for resolving lead agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a Lead Agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(c) Designation of a Lead Agency by OPR shall be based on consideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50).

15066. Consultation. When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all responsible agencies (i.e., all the other public agencies involved in carrying out or approving the project) before completing a draft EIR or Negative Declaration. This early consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all responsible agencies which will issue approvals for the project. After completing the draft EIR or Negative Declaration, the Lead Agency shall also consult with and seek to obtain comments from other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

History: 1. Repealer and new section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15067. Subsequent EIR. Where an EIR has been prepared, no additional EIR need be prepared unless:

(a) Substantial changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in a previous EIR on the project;

(b) There are substantial changes with respect to the circumstances under which the project is to be undertaken, such as a change in the proposed location of the project, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in a previous EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15068. Use of a Single EIR. The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead Agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should supplement the EIR it prepares for a program to apply it to an individual project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but should in either case comment upon the combined effect.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of compliance included (Register 73, No. 50).

15070. Ongoing Project. (a) A project as defined in Section 15037(a)(1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any draft EIR which has been completed and sent out for public review on or before January 6, 1975, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in December 1973, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 12-31-74 as an emergency, designated effective 1-7-75 (Register 75, No. 1).

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects are exempt from the requirements of CEQA, and no environmental documents are required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature.

(a) Issuance of building permits.
(b) Issuance of business licenses.
(c) Approval of final subdivision maps.
(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial. Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15074. Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

Article 7. Evaluating Projects

15080. Initial Study. If a project is not exempted by these Guidelines from the requirements of CEQA, the Lead Agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved.

If the project is to be carried out by a nongovernmental person, the Lead Agency may require such person to submit data and information which will enable the agency to make this determination.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may have a significant effect on the environment in connection with most projects where they occur, include a change that:

(1) Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

(2) Has a substantial and demonstrable negative aesthetic effect;

(3) Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

(4) Causes substantial interference with the movement of any resident or migratory fish or wildlife species;

(5) Breaches any published national, state, or local standards relating to solid waste or litter control;

(6) Results in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas;

(7) Involves the possibility of contaminating a public water supply system or adversely affecting ground water;

(8) Could cause substantial flooding, erosion or siltation;

(9) Could expose people or structures to major geologic hazards.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15082. Mandatory Findings of Significance. In every case where any of the following conditions are found to exist as a result of a project, the project shall be found to have impacts with a significant effect on the environment:

(a) Impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.

(b) Impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.

(c) Impacts for a project which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15083. Negative Declaration. (a) A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Lead Agency finds on the basis of an Initial Study will not have a significant effect on the environment. Before completing a Negative Declaration, the Lead Agency shall consult with all responsible agencies pursuant to Section 15066.

(b) A Negative Declaration must include a brief description of the project as proposed, a finding that the project will not have a significant effect on the environment, a brief statement of reasons to support the findings, and a statement indicating who prepared the initial study and where a copy of it may be obtained. The Negative Declaration should normally not exceed one page in length.

(c) The Negative Declaration shall be made available to the public with sufficient time before the project is approved to provide an opportunity for members of the public to respond to the finding.

(d) After making a decision to carry out or approve the project, the Lead Agency shall file a Notice of Determination with a copy of the Negative Declaration attached. The Notice of Determination shall include the decision of the agency to approve or disapprove the project, the determination of the agency whether the project will have a significant effect on the environment, and a statement that no EIR has been prepared pursuant to the provisions of CEQA.

(1) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approvals from a state agency, the Notice of Determination also shall be filed with the Secretary for Resources.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (d) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1)

15084. Decision to Prepare an EIR. If the Lead Agency finds, after an initial study, that the project may have a significant effect on the environment, the Lead Agency must prepare or cause to be prepared an Environmental Impact Report.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15085. EIR Process. The following steps shall be followed after the Lead Agency decides to prepare an EIR.

(a) **Preparation of EIR.** If the project is to be carried out by a nongovernmental person, the Lead Agency may require such person to submit data and information necessary to enable the Lead Agency to prepare the EIR. This information may be transmitted in the form of a draft EIR. The draft EIR which is sent out for public review must reflect the independent judgment of the Lead Agency. Use of a draft EIR submitted by an applicant is discussed in Section 15061(b).

(b) **Early Consultation.** The content of an EIR is described in Arti- 9 of these Guidelines. Each element of an EIR must be covered, and se elements should be separated into distinct selections. Before com- ting a draft EIR consisting of the information specified in Section 41, 15142, and 15143 of these Guidelines, the Lead Agency shall sult with all Responsible Agencies pursuant to Section 15066. In dition, the Lead Agency at this point should also consult directly with y person or organization it believes will be concerned with the envi- nmental effects of the project. Many public agencies have found that rly consultation solves many potential problems that would arise in ore serious form later in the review process.

(c) **Notice of Completion.** As soon as the draft EIR is completed, notice of completion must be filed with the Secretary for the Re- urces Agency. The notice shall include a brief description of the roject, its proposed location, and an address where copies of the EIR re available and the period during which comments will be received. form for this notice is provided in the Appendices. The Notice of ompletion will provide the basis for information published by the ecretary for Resources in an EIR Monitor. Where the EIR will be eviewed through the State review process handled by the State Clear- nghouse, the cover form required by the State Clearinghouse will serve s the Notice of Completion, and no Notice of Completion need be sent o the Resources Agency.

(d) **Public Review.** After completing a draft EIR, the Lead Agency hall consult with and obtain comments from public agencies having isdiction by law with respect to the project and should consult with ersons having special expertise with respect to any environmental mpact involved. Opportunity for comments from the general public hould be provided.

(1) Public agencies should use existing state, regional, or local clearinghouses to distribute EIR's and other environmental docu- ments to appropriate agencies.

(2) To make copies of EIR's available to the public, Lead Agencies should furnish copies of draft EIR's to appropriate public library systems.

(3) Public agencies should compile listings of other agencies, par- ticularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(4) Public hearings may be conducted on the environmental docu- ments, either in separate proceedings or in conjunction with other proceedings of the public agency.

(e) **Evaluation by Lead Agency.** The Lead Agency shall evaluate omments received from persons who reviewed the draft EIR.

(f) **Preparation of Final EIR.** The Lead Agency shall prepare a nal EIR. The contents of a final EIR are specified in Section 15146 of ese Guidelines.

(g) **Certification of Final EIR.** The final EIR shall be presented to the decision-making body of the Lead Agency. The Lead Agency shall certify that the final EIR has been completed in compliance with CEQA and the state guidelines and that the decision-making body or administrative official having final approval authority over the project has reviewed and considered the information contained in the EIR.

(h) **Notice of Determination.** After making a decision on the project, the Lead Agency shall file a Notice of Determination. Such notice shall include (1) the decision of the agency to approve or disapprove the project, (2) the determination of the agency whether the project will or will not have a significant effect on the environment, and (3) a statement that an EIR has been prepared pursuant to the provisions of CEQA.

(1) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(2) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located. If the project requires discretionary approval from a state agency, the notice shall also be filed with the Secretary for Resources.

(i) **Filing of Final EIR.** If the Lead Agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

(j) **Use of Final EIR by Responsible Agencies.** Each responsible agency shall consider the Lead Agency's final EIR before acting upon or approving the project pursuant to Section 15064.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15086. EIR Combined with Existing Planning and Review Process. The EIR process should be combined with the existing planning, review, and project approval process being used by each public agency. The Lead Agency shall include the EIR as a part of the regular project report which is used in the existing review and budgetary process.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required or authorized by these Guidelines.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15088. Statement of Overriding Considerations. If a public agency decides to approve a project for which serious adverse environmental consequences have been identified in an EIR, the agency may wish to make a statement identifying the other interests that warrant approval in its point of view. If such a statement is made, it should be included in the record of the project approval and may be attached to the Notice of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.1. Relation to Ministerial Projects. Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are exempt under Section 15073 of these guidelines, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.2. Exceptions. (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

(b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.3. Revisions to List of Categorical Exemptions. Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.4. Application by Public Agencies. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIR's for projects described in the classes and examples in this article except under the provisions of Section 15100.2.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities;

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition or 2500 square feet, whichever is less;

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family rental units into condominiums;

(*l*) Demolition and removal of buildings and related structures except where they are of historical, archaeological or architectural significance as officially designated by Federal, State or local governmental action.

History: 1. Amendment of subsections (b), (e), (f) and (*l*) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. Amendment of subsection (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%;

(b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new, small facilities or structures and installation of small new equipment and facilities including but not limited to:

(a) Single family residences not in conjunction with the building of two or more such units;

(b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(c) Stores, offices, and restaurants if designed for an occupant load of 20 persons of less, if not in conjunction with the building of two or more such structures;

(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction;

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15104. Class 4: Minor Alterations to Land. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for foresty and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15105. Class 5: Alterations in Land Use Limitations. Class 5 consists of minor alterations in land use limitations, except zoning, including but not limited to:

(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel nor in any change in land use or density;

(b) Issuance of minor encroachment permits.

15106. Class 6: Information Collection. Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15108. Class 8: Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15109. Class 9: Inspections. Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10: Loans. Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15111. Class 11: Accessory Structures. Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots.

15112. Class 12: Surplus Government Property Sales. Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report prepared pursuant to Government Code Section 65041 *et seq.*

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15113. Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

History: 1. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15114. Class 14: Minor Additions to Schools. Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or five classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15115. Revisions to List of Categorical Exemptions.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15116. Application by Public Agencies.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 9. Contents of Environmental Impact Reports

15140. General. Environmental impact reports shall contain the information outlined in this article.

15141. Description of Project. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals and supporting public service facilities.

History: 1. Amendment of subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15142. Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

15143. Environmental Impact. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) **The Environmental Impact of the Proposed Action:** Describe the direct and indirect impacts of the project on the environment, giving due consideration to both the short-term and long-term effects. It should include specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) **Any Adverse Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented:** Describe any adverse impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Describe impacts on any aesthetically valuable surroundings, or on human health.

(c) **Mitigation Measures Proposed to Minimize the Impact:** Describe avoidable adverse impacts, including inefficient and unnecessary consumption of energy, and the measures proposed to minimize these impacts. This discussion shall include an identification of the acceptable levels to which such impacts will be reduced, and the basis upon which such levels were identified. Where alternative measures are available to mitigate an impact, each should be discussed and the basis for selecting one alternative should be identified. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed. Examples of energy conservation measures are provided in Appendix F.

(d) **Alternatives to the Proposed Action:** Describe reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. Describe alternatives capable of substantially reducing or eliminating any environmentally adverse impacts, even if these alternatives substantially impede the attainment of the project objectives, and are more costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

History: 1. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. Describe in the environmental setting section, and other sections where applicable, water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of:

(1) The Draft EIR or a revision of the draft.

(2) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(3) A list of persons, organizations and public agencies commenting on the Draft EIR.

(4) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(b) The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50)
2. Amendment of subsection (a) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15147. Degree of Specificity. The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on projects such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Renumbering and amendment of subsection (c) to Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15148. EIR as Part of General Plan. The requirements for an EIR on a local general plan, element or amendment thereof will be satisfied by the general plan or element document, and no separate EIR will be required, if: (1) the general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines and (2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

History: 1. New Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment. The lead agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and others described in Sections 15085 (b) and (d) of these Guidelines of the time for receipt of comments on EIR's.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days except in unusual situations. While state and local agencies are not bound by federal guidelines for implementing the National Environmental Policy Act, the time limits in the federal guidelines provide an example that may be followed in some situations. The federal guidelines require at least 45 days for review of a draft EIS and at least 30 days for review of a final EIS, but not less than 90 days in total. Review periods of this length may be desirable for some large projects under CEQA, but shorter periods may be provided where the shorter period will still allow adequate review.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing Certificate of Compliance included. (Register 73, No. 50).
2. Amendment of subsections (a) and (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15161. Review of Environmental Impact Reports. (a) Public agencies must develop procedures for reviewing EIR's which Lead Agencies submit to them for comments.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the act to provide decision-makers with useful information about such factors.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the Lead Agency with the name of a contact person who is available for later consultation should this prove necessary.

History: 1. Amendment of subsections (a) and (b) and new subsection (e) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a), (b), and (d), and repealer of subsection (e) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15161.5. Review by State Agencies. (a) EIR's and Negative Declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIR's and Negative Declarations prepared by a state agency where such agency is a Lead Agency.

(2) Draft EIR's and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIS's and Negative Declarations prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1) and Parts I and II of Office of Management and Budget Circular A-95.

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved.

(d) When an EIR is submitted to the State Clearinghouse, the review period set by the Lead Agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In exceptional circumstances, The State Clearinghouse may set shorter review periods when requested by the Lead Agency.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15162. Failure to Comment. If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15163. Requests for Environmental Documents. (a) The Lead Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

(b) The Lead Agency should file draft EIR's in appropriate public library systems in order to improve public access to the draft EIR.

History: 1. Amendment and new subsection (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15164. Public Participation. While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15014. Applicability. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects.

(b) Until April 1, 1975, the objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental documents without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1974. However, the amendment to Section 15143(c) dealing with mitigation measures, must be complied with effective January 7, 1975, regardless of whether its provisions have been included in the procedures being used by a public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).
4. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 et seq.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code § 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. § 21065(c).

History: 1. Amendment filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary for Resources. The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees. (a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

15054.1 Projects Received for Filing. In those cases where a public agency under its enabling legislation or officer (such as the State Forester) ordinarily must act upon a proposed project as defined by Section 21065(c) of CEQA within a certain specified period of time of 30 days or less from the date of receipt of such application or such project otherwise becomes automatically approved by operation of law, the application shall not be deemed received for filing until such time as any environmental documentation required under CEQA has been completed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).

Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15061. Projects Controlled by State or Local Agencies. (a) When a public agency plans to carry out or approve a project which may have a significant effect on the environment, the Lead Agency shall prepare environmental documents through its own efforts or by contract unless the project is otherwise exempted by these Guidelines.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

Article 7. Evaluating Projects

15080. Initial Study. If a project is not exempted by these Guidelines from the requirements of CEQA, the Lead Agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved.

If the project is to be carried out by a nongovernmental person, the Lead Agency may require such person to submit data and information which will enable the agency to make this determination.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may have a significant effect on the environment in connection with most projects where they occur, include a change that:

(1) Is in conflict with environmental plans and goals that have been adopted by the community where the project is to be located;

(2) Has a substantial and demonstrable negative aesthetic effect;

(3) Substantially affects a rare or endangered species of animal or plant, or habitat of such a species;

(4) Causes substantial interference with the movement of any resident or migratory fish or wildlife species;

(5) Breaches any published national, state, or local standards relating to solid waste or litter control;

(6) Results in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas;

(7) Involves the possibility of contaminating a public water supply system or adversely affecting ground water;

(8) Could cause substantial flooding, erosion or siltation;

(9) Could expose people or structures to major geologic hazards.

(10) Involves timber operations wherein the degree of potential for soil erosion or water quality degradation or the amount of acreage involved is substantial; or where the operation is adjacent to, or affects an area of special or unique importance such as a park, public reserve or wildlife refuge; the habitat of a rare or endangered plant or animal species or site of archaeological, paleontological, or historical resource; or a wild or scenic river or scenic highway; or any other area of special concern or treatment; or where the operation if approved, is likely to be a highly controversial one.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. New subsection (c) (10) filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).

15082. Mandatory Findings of Significance. In every case where any of the following conditions are found to exist as a result of a project, the project shall be found to have impacts with a significant effect on the environment:

(a) Impacts which have the potential to degrade the quality of the environment or curtail the range of the environment.

(b) Impacts which achieve short-term, to the disadvantage of long-term, environmental goals. A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.

(c) Impacts for a project which are individually limited, but cumulatively considerable. A project may affect two or more separate resources where the impact on each resource is relatively small. If the effect of the total of those impacts on the environment is significant, an EIR must be prepared. This mandatory finding of significance does not apply to two or more separate projects where the impact of each is insignificant.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

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§ 15014

§ 15070

§ 15074

15014. Applicability. (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects.

(b) Until April 1, 1975, the objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental documents without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1974. However, the amendment to Section 15143(c) dealing with mitigation measures, must be complied with effective January 7, 1975, regardless of whether its provisions have been included in the procedures being used by a public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).
4. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
5. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 et seq.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any draft EIR which has been completed and sent out for public review on or before January 6, 1975, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in December 1973, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 12-31-74 as an emergency, designated effective 1-7-75 (Register 75, No. 1).
3. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Projects undertaken as immediate action necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. Ministerial projects are exempt from the requirements of CEQA, and no environmental documents are required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. It is further anticipated that the following actions will, in most cases, be ministerial in nature.

(a) Issuance of building permits.

(b) Issuance of business licenses.

(c) Approval of final subdivision maps.

(d) Approval of individual utility service connections and disconnections.

In the absence of any discretionary provision contained in local ordinance, it shall be presumed that these four actions are ministerial. Each public agency may, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15074. Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(c) **Mitigation Measures Proposed to Minimize the Impact:** Describe avoidable adverse impacts, including inefficient and unnecessary consumption of energy, and the measures proposed to minimize these impacts. This discussion shall include an identification of the acceptable levels to which such impacts will be reduced, and the basis upon which such levels were identified. Where alternative measures are available to mitigate an impact, each should be discussed and the basis for selecting one alternative should be identified. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed. Examples of energy conservation measures are provided in Appendix F.

(d) **Alternatives to the Proposed Action:** Describe reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. Describe alternatives capable of substantially reducing or eliminating any environmentally adverse impacts, even if these alternatives substantially impede the attainment of the project objectives, and are more costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

History: 1. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. Describe in the environmental setting section, and other sections where applicable, water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of:

(1) The Draft EIR or a revision of the draft.

(2) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(3) A list of persons, organizations and public agencies commenting on the Draft EIR.

(4) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(b) The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50)
2. Amendment of subsection (a) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15147. Degree of Specificity. The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

15165. Public Hearings. (a) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

History: 1. Amendment of subsections (a) and (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15166. Retention and Availability of Comments. Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the Final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

Article 11. EIR Monitor

15180. EIR Monitor. The Secretary for Resources will provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIRs and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix F
Energy Conservation

The California Environmental Quality Act was amended, effective January 7, 1975, to require that the discussion of mitigation measures in an EIR include a discussion of measures to reduce the inefficient and unnecessary consumption of energy. The following discussion is offered as assistance in meeting this requirement.

Energy conservation is the wise use of energy resources. The wisdom of a certain kind of energy use will vary according to the circumstances. In late 1974, a leading consideration in energy use is the reduction in dependence upon high priced imported petroleum. Other considerations are the reduction in pollution from energy use and finding ways to make resources in short supply last longer and be used for the most essential purposes.

Energy conservation measures, including both the available alternatives and those incorporated into the design and operation of a proposed project need to be discussed in EIR's. There are many ways in which a project may be designed or operated to make more efficient and wise use of energy. The following list of conservation measures provides examples that may be used in EIR's where relevant. The list is not exhaustive, and it is not necessary to discuss each example in every EIR.

(1) Insulation and other protection from heat loss or heat gain to conserve fuel used to heat or cool buildings and mobile homes.

(2) Use of resource conserving forms of energy such as solar energy for water and space heating, wind for operating pumps, falling water for generating electricity, and heat pumps.

(3) Energy efficient building design including such features as orientation of structures to summer and winter sunlight to absorb winter solar heat and reflect or avoid summer solar heat.

(4) Measures to reduce energy consumption in transportation such as:

(a) Providing access to alternative means of transportation for people such as bus lines, mass transit, bicycle lanes, pedestrian facilities, and car pooling.

(b) Use of small cars rather than large cars where possible.

(c) Use of alternative means of shipping which allow for energy savings.

(5) Efficient lighting practices including use of indirect natural light, use of efficient lighting fixtures and/or sources, establishment of reasonable lighting criteria to prevent over illumination, and minimum use of architectural or display lighting.

(6) Energy conserving construction practices.

(7) Use of energy conservation devices such as flywheels.
(8) Rate structures which discourage unnecessary energy consumption.
(9) Use of human or animal power where such use is feasible.
(10) Waste heat recovery.
(11) Recycling and use of recycled materials.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code § 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. § 21065(c).

History: 1. Amendment filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

15025. Emergency. Emergency means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15051. Office of Planning and Research (OPR). OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

15052. The Secretary for Resources. The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees. (a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

15054.1. Projects Received for Filing. In those cases where a public agency under its enabling legislation or officer (such as the State Forester) ordinarily must act upon a proposed project as defined by Section 21065(c) of CEQA within a certain specified period of time of 30 days or less from the date of receipt of such application or such project otherwise becomes automatically approved by operation of law, the application shall not be deemed received for filing until such time as any environmental documentation required under CEQA has been completed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

Appendix F
Energy Conservation

The California Environmental Quality Act was amended, effective January 7, 1975, to require that the discussion of mitigation measures in an EIR include a discussion of measures to reduce the inefficient and unnecessary consumption of energy. The following discussion is offered as assistance in meeting this requirement.

Energy conservation is the wise use of energy resources. The wisdom of a certain kind of energy use will vary according to the circumstances. In late 1974, a leading consideration in energy use is the reduction in dependence upon high priced imported petroleum. Other considerations are the reduction in pollution from energy use and finding ways to make resources in short supply last longer and be used for the most essential purposes.

Energy conservation measures, including both the available alternatives and those incorporated into the design and operation of a proposed project need to be discussed in EIR's. There are many ways in which a project may be designed or operated to make more efficient and wise use of energy. The following list of conservation measures provides examples that may be used in EIR's where relevant. The list is not exhaustive, and it is not necessary to discuss each example in every EIR.

(1) Insulation and other protection from heat loss or heat gain to conserve fuel used to heat or cool buildings and mobile homes.

(2) Use of resource conserving forms of energy such as solar energy for water and space heating, wind for operating pumps, falling water for generating electricity, and heat pumps.

(3) Energy efficient building design including such features as orientation of structures to summer and winter sunlight to absorb winter solar heat and reflect or avoid summer solar heat.

(4) Measures to reduce energy consumption in transportation such as:

(a) Providing access to alternative means of transportation for people such as bus lines, mass transit, bicycle lanes, pedestrian facilities, and car pooling.

(b) Use of small cars rather than large cars where possible.

(c) Use of alternative means of shipping which allow for energy savings.

(5) Efficient lighting practices including use of indirect natural light, use of efficient lighting fixtures and/or sources, establishment of reasonable lighting criteria to prevent over illumination, and minimum use of architectural or display lighting.

(6) Energy conserving construction practices.

(7) Use of energy conservation devices such as flywheels.
(8) Rate structures which discourage unnecessary energy consumption.
(9) Use of human or animal power where such use is feasible.
(10) Waste heat recovery.
(11) Recycling and use of recycled materials.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

Article 12. Exemption for Certified State Regulatory Programs

15190. General. Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section.

NOTE: Authority cited: Sections 21080.5, 21083, 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

History: 1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).

15191. Notices. Notices filed with the Secretary for Resources related to programs exempted by this article shall:
(a) Be available for public inspection.
(b) Be posted in a weekly list in the office of the Resources Agency.
(c) Remain posted for a period of 30 days.

15192. List of Exempt Programs. The following programs of state regulatory programs have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:
(a) The regulation of private timber harvesting operations by the California Division of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

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(10) Waste heat recovery.
(11) Recycling and use of recycled materials.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
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NOTE: Authority cited: Sections 21080.5, 21083, 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

History: 1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4-2-76 (Register 76, No. 14).

15191. Notices. Notices filed with the Secretary for Resources related to programs exempted by this article shall:
(a) Be available for public inspection.
(b) Be posted in a weekly list in the office of the Resources Agency.
(c) Remain posted for a period of 30 days.

15192. List of Exempt Programs. The following programs of state regulatory programs have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:
(a) The regulation of private timber harvesting operations by the California Division of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

§ 15011
§ 15013
§ 15023.5
§ 15029
§ 15029.6
§ 15031
§ 15032
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Article 11. EIR Monitor

Section
15180. EIR Monitor

Appendices

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Appendix B. Statutory Authority of State Departments
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Article 12. Exemption for Certified State Regulatory Programs

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Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

15001. Short Title. These Guidelines may be cited as the "State EIR Guidelines."

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. These Guidelines are binding on all public agencies.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15011.5. Additional Policies. The courts of this state have found the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo* v. *Yorty,* 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo* v. *Yorty,* 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc.* v. *City of Los Angeles,* 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works* v. *Bosio,* 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People* v. *County of Kern,* 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth* v. *Board of Supervisors,* 8 C. 3d 247.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project. An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved. Economic information may be included in an EIR or may be presented in whatever form the agency desires.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15013. **Time of Preparation.** (a) Environmental documents are useful planning tools to enable environmental constraints and opportunities to be considered before project plans are finalized.

(b) Environmental documents should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design and planning.

(2) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review and project approval processes being used by each public agency. When the Lead Agency is a State Agency, the environmental document shall be included as part of the regular project report which is used in its existing review and budgetary process.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15014. **Applicability.** (a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects.

(b) Until April 1, 1975, the objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental documents without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1974. However, the amendment to Section 15143(c) dealing with mitigation measures, must be complied with effective January 7, 1975, regardless of whether its provisions have been included in the procedures being used by a public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).
4. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
5. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15015. Terminology. The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 4. Definitions

15020. General. Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant. Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval. Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act. California Environmental Quality Act (CEQA) means California Public Resources Code Sections 21000 et seq.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15023. **Categorical Exemption.** Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023.5. **Cumulative Impacts.** Cumulative impacts refer to two or more individual small effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15024. **Discretionary Project.** Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code § 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. § 21065(c).

History: 1. Amendment filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

15025. **Emergency.** Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15026. **Environment.** Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act, and may mean either a draft or a final EIR.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines. Where a Lead Agency consults with Responsible Agencies in the preparation of a draft EIR, the draft EIR shall also contain the information specified in Section 15144.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15029. Feasible. Feasible means capable of being accomplished in a successful manner <u>within a reasonable period of time, taking into account economic, environmental, social, and technological factors.</u>

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15029.5. Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15029.6. Jurisdiction by Law. (a) Jurisdiction by law means the authority of any public agency

(1) <u>to grant a permit or other entitlement for use,</u>
(2) <u>to provide funding for the project in question, or</u>

(3) to exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county is the site of the project, the area in which the major environmental effects will occur, and/or the area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15039, or the Lead Agency, see Section 15030.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment of subsection (a) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project which may have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies, local agency formation commissions and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

History: 1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer. In summary, a ministerial decision involves only the use of fixed standards or objective measurements without personal judgment.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15033. Negative Declaration. Negative declaration means a written statement by the Lead Agency briefly describing the reasons that a proposed project, although not otherwise exempt, will not have a significant effect on the environment and therefore does not require the preparation of an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15034. Notice of Completion. Notice of Completion means a brief notice filed with the Secretary for Resources by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c). A copy of this notice appears in Appendix C.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15083(d) and 15085(h). A copy of this notice appears in Appendix D.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.5. Notice of Exemption. Notice of Exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b). A copy of this notice appears in Appendix E.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the State Legislature other than requests by state agencies for authorization or funding for projects independently from the Budget Act.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

History: 1. Amendment of subsection (a) (1) and new subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15038. Public Agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means a public agency which proposes to carry out a project, but is not the Lead Agency for the project. It includes all public agencies other than the Lead Agency which have approval power over the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15040. Significant Effect on the Environment. Significant effect on the environment means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 5. General Responsibilities.

15050. Public Agency Implementation. (a) Each public agency is responsible for complying with CEQA and these Guidelines. Each public agency must develop its own procedures consistent with these Guidelines.

(b) Where a public agency is a Lead Agency and prepares an EIR itself, contracts for the preparation, or accepts data and information in the form of a draft EIR from an applicant, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

(d) Any district, including a school district, need not adopt objectives, criteria and procedures of its own if it uses the objectives, criteria and procedures of another public agency whose boundaries are coterminous with the district. Any public agency may adopt the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass its own.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (d) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15051. Office of Planning and Research (OPR). (a) OPR is responsible for the preparation and development of principles, objectives, criteria and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and makes appropriate recommendations to the Secretary for Resources. OPR shall be responsible for resolving disputes over Lead Agency designation.

(b) The State Clearinghouse in the Office of Planning and Research is responsible for distributing environmental documents to State agencies, departments, boards and commissions for review and comment.

History: 1. New subsection (b) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15052. The Secretary for Resources. The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees. (a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

15054.1. Projects Received for Filing. In those cases where a public agency under its enabling legislation or officer (such as the State Forester) ordinarily must act upon a proposed project as defined by Section 21065(c) of CEQA within a certain specified period of time of 30 days or less from the date of receipt of such application or such project otherwise becomes automatically approved by operation of law, the application shall not be deemed received for filing until such time as any environmental documentation required under CEQA has been completed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15061. Projects Controlled by State or Local Agencies. (a) When a public agency plans to carry out or approve a project which is subject to CEQA, which may have a significant effect on the environment, the EIR or Negative Declaration for the project shall be prepared directly by, or under contract to, a public agency.

(b) Where a project which is subject to CEQA is to be carried out by a nongovernmental person subject to approval, financial support, or some other involvement by a public agency, the EIR or Negative Declaration shall be prepared directly by, or under contract to, the Lead Agency. However, the Lead Agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR or Negative Declaration by the Lead Agency. This information may be submitted in the form of a draft EIR if the Lead Agency desires. If information is provided in the form of a draft EIR or Negative Declaration, the Lead Agency may not use the document as its own without independent evaluation and analysis. The draft EIR or Negative Declaration which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency should require an applicant to specify to the best of his knowledge which other public agencies will have jurisdiction by law over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the Lead Agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that the EIR shall be prepared by the lead agency.

(g) Any person may submit information to the Lead Agency to assist in the preparation of an EIR or Negative Declaration. Such information may be submitted in any format and may be included in whole or in part in any such EIR or Negative Declaration if the Lead Agency subjects the information to its own independent evaluation and analysis.

History: 1. Amendment of subsections (a), (b) and (f) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (g) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15062. Private Projects.

History: 1. Repealer filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15063. Federal Projects. (a) In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their comments a discussion of the matters specified in Section 15143 of these Guidelines.

(b) In cases where these Guidelines require the preparation of an EIR by a Lead Agency and an EIS has been or will be prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an EIR required by these Guidelines, provided that the EIS or the part thereof so used, shall comply with the requirements of these Guidelines. In cases where the federal EIS is used, discussion of mitigation measures, growth inducing impact and energy conservation will have to be added or supplemented if the EIS does not include an adequate discussion of these elements.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15064. Lead Agency Principle. Where a project is to be carried out or approved by more than one public agency, only one public agency shall be responsible for preparation of environmental documents, and it will be the Lead Agency. Such environmental documents will be prepared by the Lead Agency in consultation with all responsible Agencies. The Lead Agency's environmental documents shall be the environmental documentation for all Responsible Agencies. Except as provided in Section 15069.5(c), such Responsible Agencies shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15065. Lead Agency Criteria. Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(2) Where a city has prezoned an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the required environmental document at the time of the prezoning. The city shall consult with the local agency formation commission, and the EIR shall include the comments of the local agency formation commission.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may by agreement designate which agency will be the Lead Agency. An agreement may also provide for cooperative efforts by contract, joint exercise of powers, or similar devices.

(e) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall begin to act as the Lead Agency when the following conditions occur:

(1) The Lead Agency did not prepare any environmental documents for the project, and

(2) The statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

History: 1. Amendment of subsection (a) and repealer and new subsection (d) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (d) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (e) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15065.5. Designation of Lead Agency by Office of Planning and Research. (a) In the event that the designation of a lead agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency involved may submit the dispute to the OPR for resolution.

(b) Regulations adopted by OPR for resolving lead agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a Lead Agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(c) Designation of a Lead Agency by OPR shall be based on consideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50).

15066. Consultation. When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all responsible agencies (i.e., all the other public agencies involved in carrying out or approving the project) before completing a draft EIR or Negative Declaration. This early consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all responsible agencies which will issue approvals for the project. After completing the draft EIR or Negative Declaration, the Lead Agency shall also consult with and seek to obtain comments from other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

History: 1. Repealer and new section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15067. Subsequent EIR. Where an EIR has been prepared, no additional EIR need be prepared unless:

(a) Substantial changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in a previous EIR on the project;

(b) There are substantial changes with respect to the circumstances under which the project is to be undertaken, such as a change in the proposed location of the project, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in a previous EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15068. Use of a Single EIR. The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead Agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should supplement the EIR it prepares for a program to apply it to an individual project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15068.5. Use of a General Plan EIR With Subsequent Projects. The EIR on a general plan may be used as the foundation document for EIRs subsequently prepared for specific projects within the geographic area covered by the general plan. The subsequent EIRs may reference and summarize material in the EIR on the general plan for the description of the general environmental setting and as much of the description of the environmental impacts as applies to the specific project. Detailed information in the EIR on the specific project may be limited to a description of the project, the specific environmental setting and those impacts which are not adequately described for the specific project in the EIR on the general plan. When a subsequent EIR refers to an EIR on the general plan for part of its description of the environment and the environmental impacts, copies of the EIR on the general plan shall be made available to the public in a number of locations in the community and to any clearinghouses which will assist in public review of the EIR. The purpose of this section is not to restrict analysis of environmental issues but is to avoid the necessity for repeating detail from a General Plan EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069.5. Staged EIR. (a) Where a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than 2 years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR should evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the Lead Agency for a project and requires the Lead Agency to prepare an EIR, a Responsible Agency which must grant an approval for the project before the Lead Agency has completed the EIR may prepare and consider a staged EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15070. Ongoing Project. (a) A project as defined in Section 15037(a)(1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any draft EIR which has been completed or sent out for public review on or before January 1, 1977, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in February 1975, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

(d) Any project approved before February 7, 1975, by a local agency formation commission without complying with CEQA is declared legally effective unless:

(1) The legality of the project was contested in a legal proceeding in which a violation of CEQA was alleged prior to February 7, 1975, and the case was pending and undecided by February 7, 1975, or (P.R.C. 21176(a)).

(2) The project was determined to be illegal, void, or ineffective because of noncompliance with CEQA in any judicial proceeding decided before July 6, 1975. (P.R.C. 21176(b))

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 12-31-74 as an emergency, designated effective 1-7-75 (Register 75, No. 1).
3. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).
4. Amendment of subsection (c) and new subsection (d) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Specific actions necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. (a) Ministerial projects are exempt from the requirements of CEQA, and no environmental documents are required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. (P.R.C. 21080(b)).

(b) In the absence of any discretionary provision contained in the relevant local ordinance, it shall be presumed that the following actions are ministerial:

(1) Issuance of building permits.
(2) Issuance of business licenses.
(3) Approval of final subdivision maps.
(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15074. Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) If the public agency is a state agency, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 9th Street, Sacramento. Each such list will remain posted for 30 days.

(d) If the public agency is a local agency, the notice of exemption will be filed with the County Clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).

15075. Use of Registered Professionals in Preparing EIRs. (a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41) Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77

Article 7. Evaluating Projects

15080. Initial Study. (a) If a project is subject to the requirements of CEQA and not exempted by these Guidelines, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment unless the Lead Agency can determine that the project will clearly have a significiant effect. If any aspects of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an EIR must be prepared. All phases of project planning, implementation, and operation must be considered in the Initial Study of the project. To meet the requirements of this section, the Lead Agency may use an Initial Study prepared pursuant to the National Environmental Policy Act.

(b) **Purposes.** The purposes of an Initial Study are to:

(1) Identify environmental impacts;

(2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;

(3) Focus an EIR, if one is required, on potentially significant environmental effects;

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs.

(c) **Contents.** An Initial Study shall contain in brief form:

(1) A description of the project,

(2) An identification of the environmental setting,

(3) An identification of environmental effects by use of a checklist, matrix, or other method,

(4) A discussion of ways to mitigate the significant effects identified, if any,

(5) An examination of whether the project is compatible with existing zoning and plans,

(6) The name of the person or persons who prepared or participated in the Initial Study.

(d) **Uses.** (1) The Initial Study shall be used to provide a written determination of whether a Negative Declaration or an EIR shall be prepared for a project.

(2) Where a project is revised in response to an Initial Study so that potential adverse effects are mitigated to a point where no significant environmental effects would occur, a Negative Declaration shall be prepared instead of an EIR. If the project would still result in one or more significant effects on the environment after mitigation measures are added to the project, an EIR shall be prepared.

(3) The EIR shall emphasize study of the impacts determined to be significant and can omit further examination of those impacts found to be clearly insignificant in the Initial Study.

(e) **Submission of Data.** If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study.

(f) **Format.** Sample forms for an applicant's project description and a review form for use by the Lead Agency are contained in Appendices H and I. When used together; these forms would meet the requirements for an Initial Study. These forms are only suggested, and public agencies are free to devise their own format for an Initial Study.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

History: 1. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77. For prior history, see Register 75, No. 44.

15082. Mandatory Findings of Significance. A project shall be found to have a significant effect on the environment if:

(a) The project has the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15083. Negative Declaration. (a) General. A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Lead Agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) Consultation. Before completing a Negative Declaration, the Lead Agency shall consult with all responsible agencies pursuant to Section 15066.

(c) Contents. A Negative Declaration shall include:

(1) A brief description of the project; including a commonly used name for the project if any;

(2) The location of the project and the name of the project proponent;

(3) A finding that the project will not have a significant effect on the environment;

(4) An attached copy of the Initial Study documenting reasons to support the finding.

(5) Mitigation measures, if any, included in the project to avoid potentially significant effects.

(d) Notice. (1) Notice of the preparation on a Negative Declaration shall be provided to the public within a reasonable period of time prior to final adoption by the public agency of the Negative Declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

A. Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

B. Posting of notice by the public agency on and off site in the area where the project is to be located.

C. Direct mailing to owners of property contiguous to the project.

(2) The alternatives for providing notice specified in subsection (1) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency 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 project.

(e) Public Review. The Negative Declaration shall be made available to the public with sufficient time before the project is approved to provide an opportunity for members of the public to respond to the finding. Special requirements for review of Negative Declarations review are contained in Sections 15161.5, 15162, and 15164.

(f) Notice of Determination. (1) After making a decision to carry out or approve a project for which a Negative Declaration has been prepared, the Lead Agency shall file a Notice of Determination with a copy of the Negative Declaration attached.

(2) The Notice of Determination shall include:

A. The decision of the agency to approve the project,

B. The determination of the agency whether the project will have a significant effect on the environment, and

C. A statement that no EIR has been prepared pursuant to the provisions of CEQA.

(3) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(4) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approvals from a state agency, the Notice of Determination also shall be filed with the Secretary for Resources.

(5) The filing of the Notice of Determination with the Secretary for Resources or the County Clerk starts a 30 day statute of limitations on court challenges to the approval under CEQA. (P.R.C. 21167(b))

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (d) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1)
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15084. Decision to Prepare an EIR. (a) If the Lead Agency finds, after an initial study, that the project may have a significant effect on the environment, the Lead Agency must prepare or cause to be prepared an Environmental Impact Report.

(b) An EIR should be prepared whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant effect on the environment.

(c) An EIR should be prepared when there is serious public controversy concerning the environmental effects of a project. Controversy not related to an environmental issue does not require the preparation of an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15085. EIR Process. The following steps shall be followed after the Lead Agency decides to prepare an EIR.

(a) **General.** When an agency decides that an EIR will be required for a project, it shall follow the procedures contained in this section.

(b) **Early Consultation.** (1) Before completing a draft EIR consisting of the information specified in Section 15141, 15142, and 15143 of these Guidelines, the Lead Agency shall consult with all Responsible Agencies pursuant to Section 15066. In addition, if it has not already done so, the Lead Agency should also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious form later in the review process.

(2) For projects where federal involvement might require preparation of a federal EIS, the Lead Agency under CEQA should consult with the appropriate federal agency on the need for an EIS. If both an EIR and EIS are needed, the documents should be prepared jointly where federal regulations or procedures allow, or the EIR should be prepared pursuant to Section 15063(b). Preparation of a separate EIR and EIS for the same project should be avoided, if possible.

(c) **Notice of Completion.** As soon as the draft EIR is completed, a notice of completion must be filed with the Secretary for the Resources Agency. The notice shall include a brief description of the project, its proposed location, and an address where copies of the EIR are available and the period during which comments will be received. A form for this notice is provided in the Appendices. The Notice of Completion will provide the basis for information published by the Secretary for Resources in an EIR Monitor. Where the EIR will be reviewed through the State review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the Notice of Completion, and no Notice of Completion need be sent to the Resources Agency.

(d) **Public Review.** (1) After completing a draft EIR, the Lead Agency shall consult with and obtain comments from public agencies having jurisdiction by law with respect to the project and should consult with persons having special expertise with respect to any environmental impact involved. The Lead Agency shall provide the general public with an opportunity to comment on the EIR.

(2) The Lead Agency shall provide public notice of the completion of a draft EIR at the same time as it sends a Notice of Completion to the Resources Agency. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

A. Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

B. Posting of notice by the public agency on and off the site in the area where the project is to be located.

C. Direct mailing to owners of property contiguous to the project.

(3) The alternatives for providing notice specified in subsection (2) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for such project.

(4) Public agencies shall use the State Clearinghouse to distribute EIRs and other environmental documents to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(5) To make copies of EIRs available to the public, Lead Agencies should furnish copies of draft EIRs to appropriate public library systems.

(6) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(7) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency.

(e) **Evaluation by Lead Agency.** The Lead Agency shall evaluate comments received from persons who reviewed the draft EIR.

(f) **Preparation of Final EIR.** The Lead Agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

(g) **Certification of Final EIR.** The final EIR shall be presented to the decision-making body of the Lead Agency. The Lead Agency shall certify that the final EIR has been completed in compliance with CEQA and the state guidelines and that the decision-making body or administrative official having final approval authority over the project has reviewed and considered the information contained in the EIR prior to the approval of the project.

(h) **Notice of Determination.** (1) After approving a project for which an EIR has been prepared, the Lead Agency shall file a Notice of Determination. Such notice shall include:

A. An identification of the project by its common name where possible;

B. The decision of the Lead Agency to approve or carry out the project;

C. The determination of the Lead Agency whether the project in its approved form will have a significant effect on the environment;

D. A brief statement of the mitigation measures which were adopted by the Lead Agency to reduce the impacts of the approved project; and

E. A statement that an EIR was prepared pursuant to the provisions of CEQA and was certified as required by Section 15085(g).

(2) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(3) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located. If the project requires discretionary approval from a state agency, the notice shall also be filed with the Secretary for Resources.

(4) The filing of the Notice of Determination starts a 30 day statute of limitations on court challenges to the approval under CEQA. (P.R.C. 21167(c))

(i) **Filing of Final EIR.** If the Lead Agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

(j) **Use of Final EIR by Responsible Agencies.** Each responsible agency shall consider the Lead Agency's final EIR before acting upon or approving the project pursuant to Section 15064.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsections (a), (b), (d), (g) and (h) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15086. EIR Combined with Existing Planning and Review Process. The EIR process should be combined with the existing planning, review, and project approval process being used by each public agency. The Lead Agency shall include the EIR as a part of the regular project report which is used in the existing review and budgetary process.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required or authorized by these Guidelines.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15088. Statement of Overriding Considerations. (a) Existing law requires public agencies to have reasons to support their decisions. Where agencies have taken action without preparing written reasons to support the decision based on information in the written record, courts have invalidated the action.

(b) Where the decision of the public agency allows the occurrence of substantial adverse environmental consequences identified in the final EIR, the agency must state in writing reasons to support its action based on the final EIR or other information in the record. This statement need not be contained in the EIR.

(c) The reasons to support an action described in Subsection (b) may be set forth in a Statement of Overriding Considerations. If such a statement is made, it should be included in the record of the project approval and may be attached to the Notice of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.1. Relation to Ministerial Projects. Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are exempt under Section 15073 of these guidelines, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.2. Exceptions. (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

(b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.3. Revisions to List of Categorical Exemptions. Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.4. Application by Public Agencies. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIR's for projects described in the classes and examples in this article except under the provisions of Section 15100.2.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities except where the activity will involve removal of a scenic resource including a stand of trees, a rock outcropping, or an historic building.

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition or 2500 square feet, whichever is less;

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family rental units into condominiums;

(*l*) Demolition and removal of individual small structures listed in this subsection except where the structures are of historical, archaeological or architectural significance:

(1) Single family residences not in conjunction with the demolition of two or more units,

(2) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the demolition of two or more such structures,

(3) Stores, offices, and restaurants if designed for an occupant load of 20 persons or less, if not in conjunction with the demolition of two or more such structures,

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

History: 1. Amendment of subsections (b), (e), (f) and (*l*) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%;

(b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new, small facilities or structures and installation of small new equipment and facilities including but not limited to:

(a) Single family residences not in conjunction with the building of two or more such units;

(b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures;

(c) Stores, offices, and restaurants if designed for an occupant load of 20 persons of less, if not in conjunction with the building of two or more such structures;

(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction;

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15104. Class 4: Minor Alterations to Land. Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for foresty and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;

(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. New subsection (g) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15105. Class 5: Alterations in Land Use Limitations. Class 5 consists of minor alterations in land use limitations, except zoning, including but not limited to:

(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel nor in any change in land use or density;

(b) Issuance of minor encroachment permits.

15106. Class 6: Information Collection. Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15108. Class 8: Actions by Regulatory Agencies for Protection of the Environment. Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15109. Class 9: Inspections. Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10: Loans. Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15111. Class 11: Accessory Structures. Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;
(b) Small parking lots.

15112. Class 12: Surplus Government Property Sales. Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report prepared pursuant to Government Code Section 65041 *et seq.* However, if the surplus property to be sold is located in those areas identified in Governor's Environmental Goals and Policy Report, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size or shape that it is incapable of independent development or use, or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in Article 8 of these guidelines, or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15113. Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

History: 1. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15114. Class 14: Minor Additions to Schools. Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or five classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15115. Class 15: Functional Equivalent of an EIR.

History: 1. New section filed 2-18-75 as an emergency; effective upon filing (Register 75, No. 8). For prior history, see Register 75, No. 1.
2. Repealer by operation of Section 11422.1(c) Gov. C. (Register 75, No. 44).

15116. Class 16: Transfer of Ownership of Land in Order to Create Parks. Class 16 consists of the acquisition or sale of land in order to establish a park where the land is in a natural condition or contains historic sites or archaeological sites and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological site. CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historic or archaeological site.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15117. Class 17: Open Space Contracts or Easements. Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests or easements is not included.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15118. Class 18: Designation of Wilderness Areas. Class 18 consists of the designation of wilderness areas under the California Wilderness System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15119. Class 19: Annexations of Existing Facilities and Lots For Exempt Facilities. Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15103, New Construction of Small Structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15120. Class 20: Changes in Organization of Local Agencies. Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176 Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 9. Contents of Environmental Impact Reports

15140. General. (a) Environmental Impact Reports shall contain the information outlined in this article. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) Each report shall contain a brief summary of the proposed action and its consequences in language sufficiently simple that the issues can be understood by the average member of the lay public. The EIR shall also contain a table of contents or an index.

(c) The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document but shall be available for public examination and shall be submitted to all clearinghouses which assist in public review.

(d) The EIR should be prepared using a systematic, interdisciplinary approach. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation. Preparation of EIRs is dependent upon information from many sources, including the engineering project report and many scientific documents relating to environmental features. The EIR shall reference all documents used in its preparation including where possible, a citation to the page and section number of any technical reports which were used as the basis for any statements in the EIR.

(e) The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study shall be attached to the EIR to provide the basis for limiting the impacts discussed.

(f) An EIR shall contain a statement briefly indicating the reasons for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR.

(g) Drafting an EIR necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

(h) If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15141. Description of Project. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals and supporting public service facilities.

History: 1. Amendment of subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15142. Description of Environmental Setting. An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

15143. Environmental Impact. All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) **The Significant Environmental Effects of the Proposed Project:** Describe the direct and indirect significant effects of the project on the environment, giving due consideration to both the short-term and long-term effects.

It should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) **Any Significant Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented:** Describe any significant impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Describe significant impacts on any aesthetically valuable surroundings, or on human health.

(c) **Mitigation Measures Proposed to Minimize the Significant Effects:** Describe significant, avoidable, adverse impacts, including inefficient and unnecessary consumption of energy, and measures to minimize these impacts. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts. This discussion shall include an identification of the acceptable levels to which such impacts will be reduced, and the basis upon which such levels were identified. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(d) **Alternatives to the Proposed Action:** Describe all reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. The discussion of alternatives shall include alternatives capable of substantially reducing or eliminating any significant environmental effects, even if these alternatives substantially impede the attainment of the project objectives, and are more costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

History: 1. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15143.5. Effects Found Not to be Significant. An EIR shall contain a statement briefly indicating the reasons that various possibly significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15144. Organizations and Persons Consulted. The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects. Describe in the environmental setting section, and other sections where applicable, water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15146. Contents of Final Environmental Impact Report. (a) The Final EIR shall consist of:

(1) The Draft EIR or a revision of the draft.

(2) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(3) A list of persons, organizations and public agencies commenting on the Draft EIR.

(4) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(b) The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50)

2. Amendment of subsection (a) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15147. Degree of Specificity. The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on projects such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Renumbering and amendment of subsection (c) to Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15148. EIR as Part of General Plan. (a) The requirements for an EIR on a local general plan, element or amendment thereof will be satisfied by the general plan or element document, and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) The Lead Agency for the general plan, element, or amendment shall forward the appropriate documents to the State Clearinghouse for State review.

History: 1. New Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15149. Incorporation by Reference. (a) An EIR may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the Lead Agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the Lead Agency does not have an office in the county.

(c) Where an EIR uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15150. Standards for Adequacy of an EIR. An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment. The lead agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and others described in Sections 15085 (b) and (d) of these Guidelines of the time for receipt of comments on EIR's.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days except in unusual situations. The review period for draft EIRs for which a state agency is the Lead Agency or a Responsible Agency shall be at least 45 days unless a shorter period is approved by the State Clearinghouse.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing Certificate of Compliance included. (Register 73, No. 50).
2. Amendment of subsections (a) and (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15160.5. Purpose of Review. The legally required preparation, review and comment procedures for environmental documents provide the opportunity for citizens, all professional disciplines, and public agencies to evaluate critically the environmental document and the manner in which technical data are used.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15161. Review of Environmental Impact Reports. (a) Public agencies must develop procedures for reviewing EIR's which Lead Agencies submit to them for comments.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the Act to provide decision-makers with useful information about such factors. Public agencies reviewing projects should explain the basis for their comments, and whenever possible, should submit data or references in support of such comments.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the Lead Agency with the name of a contact person who is available for later consultation should this prove necessary.

History: 1. Amendment of subsections (a) and (b) and new subsection (e) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a), (b), and (d), and repealer of subsection (e) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15161.5. Review by State Agencies. (a) EIR's and Negative Declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIR's and Negative Declarations prepared by a state agency where such agency is a Lead Agency.

(2) Draft EIR's and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIS's and Negative Declarations prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1) and Parts I and II of Office of Management and Budget Circular A-95.

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved.

(d) When an EIR is submitted to the State Clearinghouse, the review period set by the Lead Agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In exceptional circumstances, The State Clearinghouse may set shorter review periods when requested by the Lead Agency.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15162. Failure to Comment. If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15163. Requests for Environmental Documents. (a) The Lead Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

(b) The Lead Agency should file draft EIR's in appropriate public library systems in order to improve public access to the draft EIR.

History: 1. Amendment and new subsection (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15164. Public Participation. While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15165. Public Hearings. (a) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

History: 1. Amendment of subsections (a) and (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15166. Retention and Availability of Comments. Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the Final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

15167. Comments on Initiative of Public Agencies. Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 11. EIR Monitor

15180. EIR Monitor. The Secretary for Resources will provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIRs and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 12. Exemption for Certified State Regulatory Programs

15190. General. Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section.

NOTE: Authority cited: Sections 21080.5, 21083, 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

History: 1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4-2-76 (Register 76, No. 14).

15191. Notices. Notices filed with the Secretary for Resources related to programs exempted by this article shall:
(a) Be available for public inspection.
(b) Be posted in a weekly list in the office of the Resources Agency.
(c) Remain posted for a period of 30 days.

15192. List of Exempt Programs. The following programs of state regulatory programs have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:
(a) The regulation of private timber harvesting operations by the California Division of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

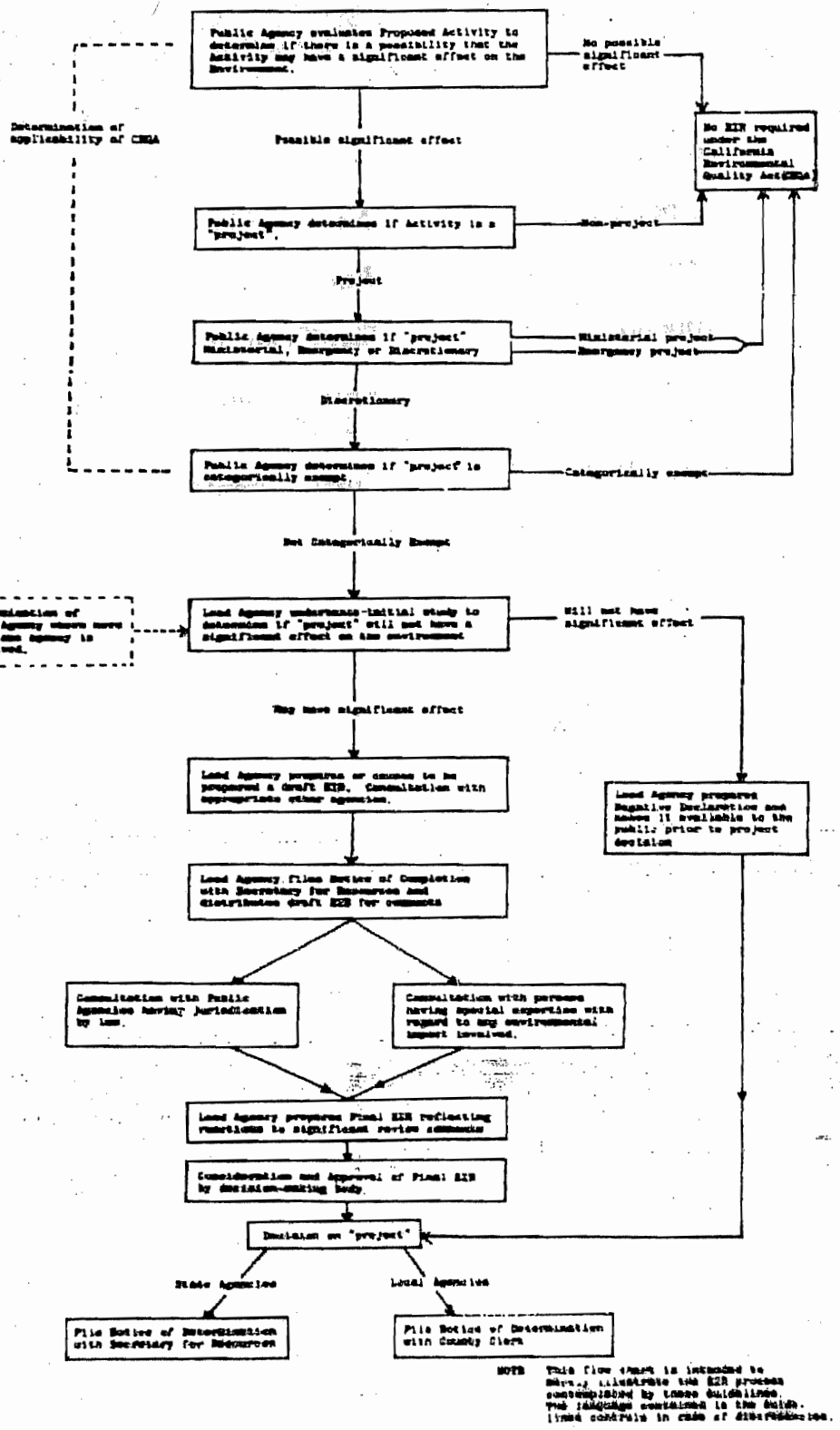
APPENDICES

Appendix A	Flow Chart
Appendix B	Statutory Authority of State Departments
Appendix C	Notice of Completion Form
Appendix D	Notice of Determination
Appendix E	Notice of Exemption
Appendix F	Energy Conservation
Appendix G	Significant Effects
Appendix H	Environmental Information Form
Appendix I	Environmental Checklist Form

Appendix A

ENVIRONMENTAL IMPACT REPORT PROCESS

FLOW CHART



NOTE: This flow chart is intended to show, illustrate the EIR process contemplated by these guidelines. The language contained in the Guide. Times controls in case of discrepancies.

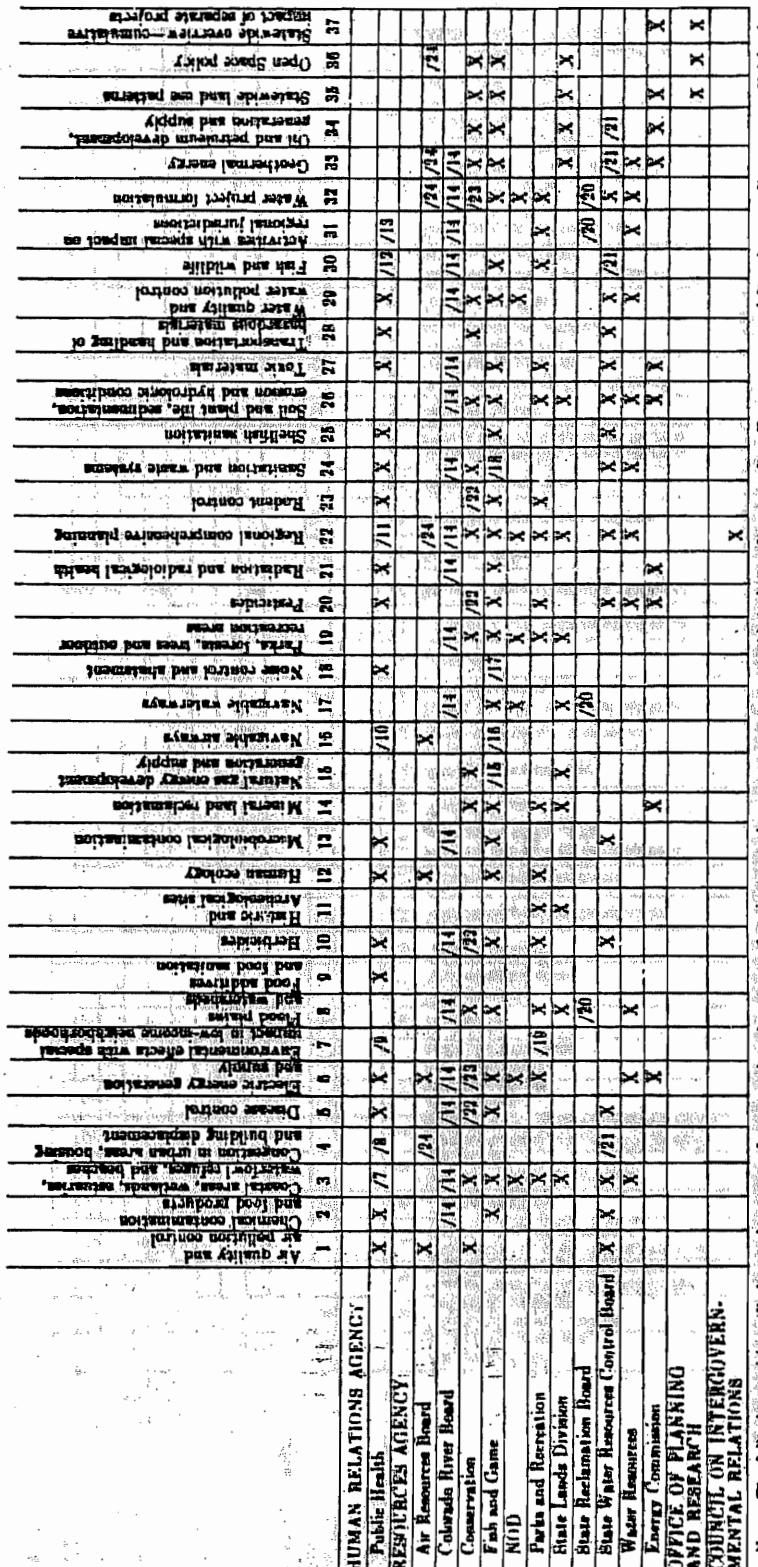
History: 1. Amendment of Appendix A filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix B

STATUTORY AUTHORITY OF STATE DEPARTMENTS IN AREAS OF ENVIRONMENTAL CONCERN

	1 Air quality and air pollution control	2 Chemical contamination and food products	3 Coastal areas, wetlands, estuaries, waterfront refuges, and beaches	4 Congestion in urban areas, housing and building displacement	5 Disease control	6 Electric energy generation and supply	7 Environmental effects with special impact in low-income neighborhoods	8 Fixed plants and wetlands	9 Food additives and food sanitation	10 Herbicides	11 Historic and Archeological sites	12 Human ecology	13 Microbiological contamination	14 Mineral land reclamation	15 Natural gas energy development generation and supply	16 Navigable airways	17 Navigable waterways	18 Noise control and abatement	19 Parks, forests, trees and outdoor recreation areas	20 Pesticides	21 Radiation and radiological health	22 Regional comprehensive planning	23 Rodent control	24 Sanitation and waste systems	25 Shellfish sanitation	26 Soil and plant life, sedimentation, erosion and hydrologic conditions	27 Toxic materials	28 Transportation and handling of hazardous materials	29 Water quality and water pollution control	30 Fish and wildlife	31 Activities with special impact on regional jurisdictions	32 Water project formulation	33 Geothermal energy	34 Oil and petroleum development, generation and supply	35 Statewide land use patterns	36 Open Space policy	37 Statewide overview—cumulative impact of separate projects
AGRICULTURE AND SERVICES AGENCY																																					
Food and Agriculture	*/1	X			X			X	X	X		/2	X						X	X			X	/3		X	X	/4	X	/5							
BUSINESS AND TRANSPORTATION AGENCY																																					
Aeronautics	X															X		X				X															
CHP	/6																	X										X									
Corporations																																					
DMV	X																											X									
H CD				X			X															X															
Office of Transp. Planning & Research				X			X																				X										X
Public Works							X				X											X															
Real Estate				X			X	X														X															
Savings and Loan																						X															

* See Appendix B footnotes.



Note: The following entities will also receive reports for review but their areas of environmental concern are not yet established: San Francisco Bay Conservation and Development Commission, California Tahoe Regional Planning Agency and Wildlife Conservation Board.

History: 1. Amendment of Appendix B filed 12-15-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

APPENDIX B FOOTNOTES

No.

1. **Agriculture**—(1) Air quality and air pollution control
   Effects on plants and animals
2. **Agriculture**—(12) Human Ecology
   Protection of food and fibre
3. **Agriculture**—(24) Sanitation and waste systems
   Agriculture, dairy and feed lot systems
4. **Agricultural**—(28) Transportation and handling of hazardous materials
   As pertains to transportation, handling, storage and decontamination of pesticides.
5. **Agriculture**—(30) Fish and wildlife
   Pesticide effects, predatory animal control, bird control
6. **CHP**—(1) Air quality and air pollution control
   Enforcement of motor vehicle regulations
7. **Public Health**—(3) Coastal areas, wetlands, etc.
   Beach sanitation, water pollution, solid waste and mosquito control
8. **Public Health**—(4) Congestion in urban areas, housing and building displacement
   Pertains to health component
9. **Public Health**—(7) Environmental effects with special impact in low-income neighborhoods
   Most of these are strongly related to health
10. **Public Health**—(16) Navigable airways
    Pertains to noise
11. **Public Health**—(22) Regional comprehensive planning
    Pertains to personal and environmental health components
12. **Public Health**—(30) Wildlife
    As it may pertain to human health hazards
13. **Public Health**—(31) Activities with special impact on regional jurisdictions
    Pertains to comprehensive health planning
14. **Colorado River Board**—(2), (3), (5), (6), (8), (10), (13), (17), (19), (21), (22), (24), (26), (27), (29), (30), (31), (32) and (33).
    As pertains to the Colorado, New and Alamo Rivers
15. **Fish and Game**—(15) Natural gas energy development, generation and supply
    As field development and distribution systems may affect fish and wildlife
16. **Fish and Game**—(16) Navigable airways
    As may affect migrating and resident wildlife
17. **Fish and Game**—(18) Noise control and abatement
    As excessive noise may affect wildlife
18. **Fish and Game**—(24) Sanitation and waste systems
    As water quality may affect fish and wildlife
19. **Parks and Recreation**—(7) Environmental effects with special impact in low-income neighborhoods
    In impacted areas only
20. **Reclamation Board**—(8), (17), (31) and (32)
    In areas of Board's jurisdiction only
21. **State Water Resources Control Board**—(4), (30), (33) and (34)
    As may pertain to water quality
22. **Conservation**—(5), (10), (20) and (23)
    With respect to forest land

23. **Conservation**—(6) and (32)
As related to fire protection or State (fire protection) responsibility land
24. **Air Resources Board**—(4), (22), (32), (33) and (36)
As may pertain to residential, commercial, industrial or transportation growth

Appendix C

NOTICE OF COMPLETION

State of California
The Resources Agency

SECRETARY FOR RESOURCES

1416 Ninth Street, Room 1311
Sacramento, California 95814

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

History: 1. Amendment of Appendix C filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix D

NOTICE OF DETERMINATION

TO: ☐ Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814

☐ County Clerk
County of _____

FROM: (Lead Agency) _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

State Clearinghouse Number (If submitted to State Clearinghouse)

Contact Person Telephone Number

Project Location

Project Description

This is to advise that the _____
(Lead Agency)
has made the following determinations regarding the above described project:

1. The project has been ☐ approved ☐ disapproved by the Lead Agency.
2. The project ☐ will ☐ will not have a significant effect on the environment.
3. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Negative Declaration is attached.

Date Received for Filing_____

Signature

Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Appendix E

NOTICE OF EXEMPTION

TO: ☐ Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814

☐ County Clerk
County of _____
_____
_____

FROM:

_____
Project Title

_____
Project Location—Specific

_____
Project Location—City Project Location—County

_____
Description of Nature, Purpose, and Beneficiaries of Project

_____
Name of Public Agency Approving Project

_____
Name of Person or Agency Carrying Out Project

_____
Exempt Status: (Check One)

____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

_____
Reasons why project is exempt:

_____
Contact Person Area Code Telephone Extension

_____
If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? Yes__ No__

Date Received for Filing

_____
Signature

_____
Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

History: 1. New Appendix E filed 3-26-74 as an emergency; effective upon filing. (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Appendix F

ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,
(2) decreasing reliance on natural gas and oil, and
(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Initial and life-cycle energy costs or supplies.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.
2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
2. The potential of siting, orientation, and design to minimize energy consumption.
3. The potential for reducing peak energy demand.
4. Alternate fuels (particularly renewable ones) or energy systems.
5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176. Public Resources Code.

History: 1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).
3. Repealer and new Appendix F filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.

Appendix G

SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(b) Have a substantial, demonstrable negative aesthetic effect;

(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;

(e) Breach published national, state, or local standards relating to solid waste or litter control;

(f) Substantially degrade water quality;

(g) Contaminate a public water supply;

(h) Substantially degrade or deplete ground water resources;

(i) Interfere substantially with ground water recharge;

(j) Disrupt or alter an archaeological site over 200 years old, an historic site or a paleontological site except as part of a scientific study of the site;

(k) Induce substantial growth or concentration of population;

(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;

(m) Displace a large number of people;

(n) Encourage activities which result in the use of large amounts of fuel or energy;

(o) Use fuel or energy in a wasteful manner;

(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;

(r) Expose people or structures to major geologic hazards;

(s) Extend a sewer trunk line with capacity to serve new development;

(t) Substantially diminish habitat for fish, wildlife or plants;

(u) Disrupt or divide the physical arrangement of an established community;

(v) Create a public health hazard or a potential public health hazard;

(w) Conflict with established recreational, educational, religious or scientific uses of the area;

(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New Appendix G filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.

Appendix H

ENVIRONMENTAL INFORMATION FORM

(To be completed by applicant)

Date Filed _____

GENERAL INFORMATION

1. Name and address of developer or project sponsor: _____

2. Address of project: _____
Assessor's Block and Lot Number _____

3. Name, address, and telephone number of person to be contacted concerning this project: _____

4. Indicate number of the permit application for the project to which this form pertains: _____

5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

6. Existing zoning district: _____

7. Proposed use of site (Project for which this form is filed):

PROJECT DESCRIPTION

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off-street parking provided.
12. Attach plans.
13. Propose scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

YES	NO	
___	___	21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.
___	___	22. Change in scenic views or vistas from existing residential areas or public lands or roads.
___	___	23. Change in pattern, scale or character of general area of project.

YES NO

___ ___ 24. Significant amounts of solid waste or litter.

___ ___ 25. Change in dust, ash, smoke, fumes or odors in vicinity.

___ ___ 26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.

___ ___ 27. Substantial change in existing noise or vibration levels in the vicinity.

___ ___ 28. Site on filled land or on slope of 10 percent or more.

___ ___ 29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.

___ ___ 30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).

___ ___ 31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).

___ ___ 32. Relationship to a larger project or series of projects.

ENVIRONMENTAL SETTING

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.

34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date _____ _____

(Signature)

For _____

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New Appendix H filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 40). Note: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.

Appendix I

ENVIRONMENTAL CHECKLIST FORM

(To be completed by Lead Agency)

I. BACKGROUND.

1. Name of Proponent _____
2. Address and Phone Number of Proponent:

_____

_____

_____

3. Date of Checklist Submitted _____
4. Agency Requiring Checklist _____
5. Name of Proposal, if applicable _____

_____

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required on attached sheets.)

	YES	MAYBE	NO
1. **Earth.** Will the proposal result in:			
a. Unstable earth conditions or in changes in geologic substructures?	___	___	___
b. Disruptions, displacements, compaction or overcovering of the soil?	___	___	___
c. Change in topography or ground surface relief features?	___	___	___
d. The destruction, covering or modification of any unique geologic or physical features?	___	___	___
e. Any increase in wind or water erosion of soils, either on or off the site?	___	___	___
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	___
g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?			
2. **Air.** Will the proposal result in:			
a. Substantial air emissions or deterioration of ambient air quality?	___	___	___
b. The creation of objectionable odors?	___	___	___
c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	___	___	___
3. **Water.** Will the proposal result in:			
a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?	___	___	___
b. Changes in absorption rates, drainage patterns or the rate and amount of surface water runoff?	___	___	___
c. Alterations to the course or flow of flood waters?	___	___	___
d. Change in the amount of surface water in any water body?	___	___	___

	YES	MAYBE	NO
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	___	___	___
f. Alteration of the direction or rate of flow of ground waters?	___	___	___
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	___	___	___
h. Substantial reduction in the amount of water otherwise available for public water supplies?	___	___	___
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	___	___	___
4. **Plant Life.** Will the proposal result in:			
a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, microflora and aquatic plants)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of plants?	___	___	___
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	___	___	___
d. Reduction in acreage of any agricultural crop?	___	___	___
5. **Animal Life.** Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects or microfauna)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of animals?	___	___	___
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	___	___	___
d. Deterioration to existing fish or wildlife habitat?	___	___	___
6. **Noise.** Will the proposal result in:			
a. Increases in existing noise levels?	___	___	___
b. Exposure of people to severe noise levels?	___	___	___
7. **Light and Glare.** Will the proposal produce new light or glare?	___	___	___
8. **Land Use.** Will the proposal result in a substantial alteration of the present or planned land use of an area?	___	___	___
9. **Natural Resources.** Will the proposal result in:			
a. Increase in the rate of use of any natural resources?	___	___	___
b. Substantial depletion of any nonrenewable natural resource?	___	___	___
10. **Risk of Upset.** Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	___	___	___

	YES	MAYBE	NO
11. **Population.** Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?	___	___	___
12. **Housing.** Will the proposal affect existing housing, or create a demand for additional housing?	___	___	___
13. **Transportation/Circulation.** Will the proposal result in:			
a. Generation of substantial additional vehicular movement?	___	___	___
b. Effects on existing parking facilities, or demand for new parking?	___	___	___
c. Substantial impact upon existing transportation systems?	___	___	___
d. Alterations to present patterns of circulation or movement of people and/or goods?	___	___	___
e. Alterations to waterborne, rail or air traffic?	___	___	___
f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			
14. **Public Services.** Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
a. Fire protection?	___	___	___
b. Police protection?	___	___	___
c. Schools?	___	___	___
d. Parks or other recreational facilities?	___	___	___
e. Maintenance of public facilities, including roads?			
f. Other governmental services?	___	___	___
15. **Energy.** Will the proposal result in:			
a. Use of substantial amounts of fuel or energy?	___	___	___
b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?	___	___	___
16. **Utilities.** Will the proposal result in a need for new systems, or substantial alterations to the following utilities:			
a. Power or natural gas?	___	___	___
b. Communications systems?	___	___	___
c. Water?	___	___	___
d. Sewer or septic tanks?	___	___	___
e. Storm water drainage?	___	___	___
f. Solid waste and disposal?	___	___	___
17. **Human Health.** Will the proposal result in:			
a. Creation of any health hazard or potential health hazard (excluding mental health)?	___	___	___
b. Exposure of people to potential health hazards?	___	___	___
18. **Aesthetics.** Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?	___	___	___

	YES	MAYBE	NO
19. **Recreation.** Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?	___	___	___
20. **Archeological/Historical.** Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building?	___	___	___
21. **Mandatory Findings of Significance.**			
(a) Does the project have the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	___	___	___
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)	___	___	___
c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	___	___	___
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	___	___	___

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

IV. DETERMINATION
(To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION WILL BE PREPARED.

☐ I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Date _____ _____
(Signature)

For _____

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New Appendix I filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.

Article 11. EIR Monitor

Section
15180. EIR Monitor

Appendices

Appendix A. Flow Chart
Appendix B. Statutory Authority of State Departments
Appendix C. Notice of Completion Form
Appendix D. Notice of Determination
Appendix E. Notice of Exemption
Appendix F. Energy Conservation
Appendix G. Significant Effects
Appendix H. Environmental Information Form
Appendix I. Environmental Checklist Form

Article 12. Exemption for Certified State Regulatory Programs

Section
15190. General
15191. Notices
15192. List of Exempt Programs

Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

15001. Short Title. These Guidelines may be cited as the "State EIR Guidelines."

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

(2) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(3) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located. If the project requires discretionary approval from a state agency, the notice shall also be filed with the Secretary for Resources.

(4) The filing of the Notice of Determination starts a 30 day statute of limitations on court challenges to the approval under CEQA. (P.R.C. 21167(c))

(i) **Filing of Final EIR.** If the Lead Agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

(j) **Use of Final EIR by Responsible Agencies.** Each responsible agency shall consider the Lead Agency's final EIR before acting upon or approving the project pursuant to Section 15064.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsections (a), (b), (d), (g) and (h) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15086. EIR Combined with Existing Planning and Review Process. The EIR process should be combined with the existing planning, review, and project approval process being used by each public agency. The Lead Agency shall include the EIR as a part of the regular project report which is used in the existing review and budgetary process.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15087. Additional Notices. In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required or authorized by these Guidelines.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15088. Findings. (a) No public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects of the project unless the public agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).

15090. Limitations on Local Responsible Agencies. In applying the duty to mitigate or avoid significant effects on the environment whenever it is feasible to do so, the scope of concern of a local agency which is functioning as a Lead Agency shall differ from that of a local agency which is functioning as a Responsible Agency. A local agency functioning as a Lead Agency shall consider the significant effects, both individual and cumulative, of all activities involved in the project. A local agency functioning as a Responsible Agency shall have responsibility for considering only the significant effects of those activities, which it is required by law to carry out or approve that are involved in a project for which a Lead Agency has prepared an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).

Article 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.1. Relation to Ministerial Projects. Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are exempt under Section 15073 of these guidelines, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.2. Exceptions. (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

(a) **The Significant Environmental Effects of the Proposed Project:** Describe the direct and indirect significant effects of the project on the environment, giving due consideration to both the short-term and long-term effects.

It should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services.

(b) **Any Significant Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented:** Describe any significant impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Describe significant impacts on any aesthetically valuable surroundings, or on human health.

(c) **Mitigation Measures Proposed to Minimize the Significant Effects:** Describe significant, avoidable, adverse impacts, including inefficient and unnecessary consumption of energy, and measures to minimize these impacts. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts. This discussion shall include an identification of the acceptable levels to which such impacts will be reduced, and the basis upon which such levels were identified. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(d) **Alternatives to the Proposed Action:** Describe all reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. The discussion of alternatives shall include alternatives capable of substantially reducing or eliminating any significant environmental effects, even if these alternatives substantially impede the attainment of the project objectives, and are more costly.

(e) **The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity:** Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) **Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented:** Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) **The Growth-Inducing Impact of the Proposed Action:** Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

History: 1. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15143.1. Limitations on Discussion of Environmental Impact. The information required by subsections (e) and (f) of Section 15143 need be included only in EIRs prepared in connection with any of the following activities.

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21176, Public Resources Code.

History: 1. New section filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).

15143.5. Effects Found Not to be Significant. An EIR shall contain a statement briefly indicating the reasons that various possibly significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

§ 15011.6
§ 15012
§ 15023.7
§ 15029.6
§ 15030
§ 15035.7
§ 15039
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§ 15051
§ 15054.1
§ 15054.2
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§ 15063
§ 15064
§ 15065.3
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§ 15066
§ 15067
§ 15069.6
§ 15070
§ 15074
§ 15075
§ 15076
§ 15077
§ 15078
§ 15079
§ 15080

Article 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

15001. Short Title. These Guidelines may be cited as the "State EIR Guidelines."

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 2. Purpose

15005. Purpose. The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. These Guidelines are binding on all public agencies.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Article 3. Policy

15010. Legislative Declaration. The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy. The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15011.5. Additional Policies. The courts of this state have found the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc.* v. *City of Los Angeles*, 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works* v. *Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People* v. *County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth* v. *Board of Supervisors*, 8 C. 3d 247.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15011.6. State Policies Regarding Use of Environmental Impact Reports. The Legislature has declared that the following policies shall apply to the use of environmental impact reports:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which such significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out to the extent it is feasible to do so.

(c) In the event that economic, social, technical, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, such project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) Environmental impact reports should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

(e) Information developed in individual environmental impact reports should be incorporated into a data base which can be used to reduce delay and duplication in preparation of later environmental impact reports.

(f) The EIR process is intended to enable public agencies in evaluating projects to determine whether a project may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to a project as proposed. These steps of analysis and evaluation must be completed prior to approval of the project.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15012. Informational Document. An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The information in an EIR constitutes evidence that a public agency shall consider along with any other information which may be presented to the agency. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved.

(b) Economic information may be included in an EIR or may be presented in whatever form the agency desires.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15023. Categorical Exemption. Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023.5. Cumulative Impacts. Cumulative impacts refer to two or more individual small effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15023.7. Decision Making Body. "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.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15024. Discretionary Project. Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code § 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. § 21065(c).

History: 1. Amendment filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

15025. Emergency. Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15026. Environment. Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents. Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report. Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act, and may mean either a draft or a final EIR.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines. Where a Lead Agency consults with Responsible Agencies in the preparation of a draft EIR, the draft EIR shall also contain the information specified in Section 15144.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15146.

History: 1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15028. EIS—Environmental Impact Statement. Environmental Impact Statement (EIS) means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15029. Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15029.5. Initial Study. Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15029.6. Jurisdiction by Law. (a) Jurisdiction by law means the authority of any public agency

(1) to grant a permit or other entitlement for use,
(2) to provide funding for the project in question, or
(3) to exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is the site of the project, the area in which the major environmental effects will occur, and/or the area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15039, or the Lead Agency, see Section 15030.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

History: 1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment of subsection (a) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment of subsection (b) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15030. Lead Agency. Lead Agency means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will prepare the environmental documents for the project either directly or by contract. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15065.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15031. Local Agency. Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies, local agency formation commissions and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

History: 1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15032. Ministerial Projects. Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer. In summary, a ministerial decision involves only the use of fixed standards or objective measurements without personal judgment.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15033. Negative Declaration. Negative declaration means a written statement by the Lead Agency briefly describing the reasons that a proposed project, although not otherwise exempt, will not have a significant effect on the environment and therefore does not require the preparation of an EIR.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15034. Notice of Completion. Notice of Completion means a brief notice filed with the Secretary for Resources by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c). A copy of this notice appears in Appendix C.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035. Notice of Determination. Notice of Determination means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15083(d) and 15085(h). A copy of this notice appears in Appendix D.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.5. Notice of Exemption. Notice of Exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b). A copy of this notice appears in Appendix E.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.7. Notice of Preparation. Notice of Preparation means a brief notice sent by a Lead Agency by certified mail to notify the Responsible Agencies that the Lead Agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from the Responsible Agencies as to the scope and content of the environmental information to be included in the EIR. A sample form is included as Appendix J to these Guidelines. Public Agencies are free to develop their own formats for this notice.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15036. Person. Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project. (a) Project means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the State Legislature other than requests by state agencies for authorization or funding for projects independently from the Budget Act.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

History: 1. Amendment of subsection (a) (1) and new subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15038. Public Agency. Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency. Responsible agency means a public agency which proposes to carry out or approve a project, for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15040. Significant Effect on the Environment. Significant effect on the environment means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

History: 1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 5. General Responsibilities.

15050. Public Agency Implementation. (a) Each public agency is responsible for complying with CEQA and these Guidelines. Each public agency must develop its own procedures consistent with these Guidelines.

(b) Where a public agency is a Lead Agency and prepares an EIR itself, contracts for the preparation, or accepts data and information in the form of a draft EIR from an applicant, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

(12) Time periods for performing functions under CEQA as described in Section 15054.2.

(d) Any district, including a school district, need not adopt objectives, criteria and procedures of its own if it uses the objectives, criteria and procedures of another public agency whose boundaries are coterminous with the district. Any public agency may adopt the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass its own.

(e) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 60 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (d) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. New subsections (c)(12) and (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15051. Office of Planning and Research (OPR). (a) OPR is responsible for the preparation and development of principles, objectives, criteria, and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and make appropriate recommendations to the Secretary for Resources.

(b) The State Clearinghouse in the Office of Planning and Research is responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(c) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in determining the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(d) OPR has responsibility for ensuring that State Responsible Agencies provide the necessary information to Lead Agencies in response to Notices of Preparation within the 45 day period as specified in Section 15066(d).

(e) OPR will resolve disputes as to which agency is the Lead Agency for a project as described in Section 15065.5.

History: 1. New subsection (b) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15052. The Secretary for Resources. The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees. (a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance. Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

15054.1. Projects Received for Filing. Where the following conditions occur, a public agency may deem an application for a project not received for filing until such time as the environmental documentation required by CEQA has been completed:

(a) The enabling legislation for a program requires the public agency or an officer (such as the Director of Forestry) to take action on an application within a specified period of time of 30 days or less, and

(b) The enabling legislation provides that the project will become approved by operation of law if the agency or officer fails to take any action within such specified time period, and

(c) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

History: 1. New section filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15054.2. Lead Agency CEQA Time Limits. (a) Each public agency shall include in its implementing procedures time periods for performing the functions described in this section.

(b) When the public agency is acting as a Lead Agency for a project for which the agency will grant a lease, license, permit, certificate, or other entitlement for use, the agency shall complete and certify an EIR in not more than one year or complete and adopt a Negative Declaration in not more than 105 days.

(1) Different time limits may be established for different types of projects subject to the 105 day and 1 year maximum time limits.

(2) The time limits shall be measured from the date on which an application requesting approval for the project is received and accepted as complete by the agency.

(A) State agencies are required to adopt lists and criteria by which to determine the completeness of an application. (Government Code Section 65940 & 65941.)

(B) Local agencies may adopt lists and criteria by which to determine the completeness of applications. Different lists and criteria may be developed for different kinds of projects.

(3) The procedures may provide for a reasonable extension of the time periods under this subsection in the event that compelling circumstance justify additional time and the project applicant consents to the extension.

(4) The Lead Agency may waive the one year time period or the 105 day period if all the following conditions occur:

(A) The project will require both an EIR or a Negative Declaration under CEQA and an EIS or a Negative Declaration under the National Environmental Policy Act,

(B) Additional time will be required to prepare a combined EIR-EIS, or a combined Negative Declaration under both laws,

(C) The time required to prepare such a combined document would be less than the time required to prepare each document separately, and

(D) The applicant has requested or consented to the waiver.

(5) If the Lead Agency waives the time periods as provided in subsection (4), the Lead Agency must approve or disapprove the project within 60 days after the combined document under CEQA and NEPA has been completed. (Government Code Section 65951.)

(c) Within 45 days after accepting an application as complete for a project involving issuance of a lease, permit, license, certificate, or other entitlement for use, a Lead Agency shall make an initial determination of whether the project will need an EIR or a Negative Declaration.

(d) A Lead Agency shall convene a meeting with one or more Responsible Agencies to discuss the scope and content of a proposed EIR as soon as possible but not later than 30 days after the meeting is requested as provided in Section 15066(e).

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15054.3. Responsible Agency CEQA Time Limits. As soon as possible after receiving a Notice of Preparation and in no event more than 45 days after receiving the notice, a Responsible Agency shall inform the Lead Agency of the scope and content of the environmental information that the Responsible Agency would need in the EIR.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15055. Delegation of Responsibilities. (a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determination of whether a project is exempt.
(2) Conduct of an initial study.
(3) Preparation of a Negative Declaration or EIR.
(4) Preparation of responses to public comments.
(5) Certification that the decision making body has reviewed and considered an EIR or Negative Declaration.
(6) Filing of Notices.

(b) The decision making body of a public agency may not delegate the following functions:

(1) Review and consideration of a final EIR or Negative Declaration prior to approving a project.
(2) The making of findings as required by Sections 15088 and 15089.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision making body, the advisory body shall also review and consider the EIR or Negative Declaration.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Article 6. Application of the Act to Projects

15060. General Rule. The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

History: 1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15061. Projects Controlled by State or Local Agencies.

(a) When a public agency plans to carry out or approve a project which is subject to CEQA, which may have a significant effect on the environment, the EIR or Negative Declaration for the project shall be prepared directly by, or under contract to, a public agency.

(b) Where a project which is subject to CEQA is to be carried out by a nongovernmental person subject to approval, financial support, or some other involvement by a public agency, the EIR or Negative Declaration shall be prepared directly by, or under contract to, the Lead Agency. However, the Lead Agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR or Negative Declaration by the Lead Agency. This information may be submitted in the form of a draft EIR if the Lead Agency desires. If information is provided in the form of a draft EIR or Negative Declaration, the Lead Agency may not use the document as its own without independent evaluation and analysis. The draft EIR or Negative Declaration which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency should require an applicant to specify to the best of his knowledge which other public agencies will have jurisdiction by law over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the Lead Agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that the EIR shall be prepared by the lead agency.

(g) Any person may submit information to the Lead Agency to assist in the preparation of an EIR or Negative Declaration. Such information may be submitted in any format and may be included in whole or in part in any such EIR or Negative Declaration if the Lead Agency subjects the information to its own independent evaluation and analysis.

History: 1. Amendment of subsections (a), (b) and (f) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (g) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15062. Private Projects.

History: 1. Repealer filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15063. Federal Projects. (a) When a State Agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include a discussion of the material specified in Section 15143.

(b) When an EIR is required by CEQA and a federal EIS has been or will be prepared for the same project, all or any part of the EIS may be used as all or any part of the EIR if the EIS or part used complies with these Guidelines. In cases where a federal EIS is used, discussion of mitigation measures, growth-inducing impact, and energy conservation will have to be added or supplemented if the EIS does not include an adequate discussion of these elements.

(c) When a project requires both an EIR and an EIS, the Lead Agency shall whenever possible, use the EIS as the EIR as provided in subsection (b).

(d) If a Lead Agency finds that an EIS for a project would not be prepared by the Federal Agency by the time when the Lead Agency will need to consider an EIR, the Lead Agency should try to prepare a combined EIR-EIS. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the EIR-EIS. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state or local agency unless the federal agency was involved in the preparation of the document.

(e) When it plans to use an EIS or prepare a joint EIR-EIS, the Lead Agency shall consult as soon as possible with the agency that would prepare the EIS.

(f) Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15054.2.

(g) Where the federal agency circulated the EIS for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15085 (d), the Lead Agency under CEQA need not recirculate the EIS for public review. One review and comment period is enough. The Lead Agency shall give notice that it will use the EIS in the place of an EIR and that it believes that the EIS meets the requirements of CEQA.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15064. Lead Agency Principle. (a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparation of environmental documents, and it will be the Lead Agency. Such environmental documents will be prepared by the Lead Agency in consultation with all responsible Agencies.

(b) The Lead Agency's environmental documents shall be the environmental documentation for all responsible agencies. Except as provided in Section 15069.5 (c), such responsible agencies shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

(c) The determination of the Lead Agency of whether to prepare an environmental impact report or a negative declaration shall be final and conclusive on all persons, including Responsible Agencies, as provided by Section 21080.1 of the Public Resources Code, unless:

(1) The decision is challenged as provided in Section 21167 of the Public Resources Code, or

(2) Circumstances change as provided in Section 15067.

(d) Where a decision making body has power to make a final decision on a project subject to appeal to another body, the decision making body shall review and consider the EIR. The appeal body shall also review and consider the EIR before deciding an appeal from a decision on the project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15065. Lead Agency Criteria. Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(2) Where a city has prezoned an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the required environmental document at the time of the prezoning. The city shall consult with the local agency formation commission, and the EIR shall include the comments of the local agency formation commission.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may by agreement designate which agency will be the Lead Agency. An agreement may also provide for cooperative efforts by two or more agencies, joint exercise of powers, or similar devices.

History: 1. Amendment of subsection (d) and repealer of subsection (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history, see Register 76, No. 41.

15065.3. Shift in Lead Agency Responsibilities. (a) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall begin to act as the Lead Agency when any of the following conditions occur:

(1) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(2) The Lead Agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15067,

(B) The Lead Agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the Lead Agency's action under CEQA has expired.

(3) The Lead Agency prepared inadequate environmental documents without consulting with the Responsible Agency as required by Section 15066 and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(b) When a Responsible Agency assumes the duties of a Lead Agency under this section, the time limits applicable to a Lead Agency shall apply to the actions of the agency.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15065.5. Designation of Lead Agency by Office of Planning and Research. (a) In the event that the designation of a Lead Agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency, or in the case of a project described in subdivision (c) of Section 21065 of the Public Resources Code, the applicant for such project may submit the dispute to the OPR for resolution.

(b) OPR shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute from any public agency or from the applicant pursuant to subsection (a) (2).

(c) Regulations adopted by OPR for resolving Lead Agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a Lead Agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(d) Designation of a Lead Agency by OPR shall be based on consideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

History: 1. New section filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50).

2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15066. Consultation. (a) When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all Responsible Agencies (i.e., all the other public agencies involved in carrying out or approving the project) before completing a draft EIR or adopting Negative Declaration. Consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all Responsible Agencies which will issue approvals for the project.

(b) Prior to determining whether a negative declaration or environmental impact report is required for a project, the Lead Agency shall consult with all Responsible Agencies. This first step of consultation may be done quickly and informally.

(c) Immediately after deciding that an environmental impact report is required for a project, the Lead Agency shall send to each Responsible Agency by certified mail a Notice of Preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project.

(1) The Notice of Preparation shall provide the Responsible Agencies with sufficient information describing the project and the environmental effects to enable the Responsible Agencies to make a meaningful response. At a minimum, the information should include:

(A) Description of the project,
(B) Location of the project, and
(C) Probable environmental effects of the project.

(2) A sample format for a Notice of Preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the Initial Study may be sent with the notice to supply the necessary information.

(3) The Lead Agency may begin work on the draft EIR immediately without awaiting responses to the Notice of Preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the Notice of Preparation.

(d) After receiving the Notice of Preparation under subparagraph (c), each Responsible Agency shall provide the Lead Agency with specific detail about the scope and content of the environmental information related to the Responsible Agency's area of statutory responsibility which must be included in the environmental impact report.

(e) In order to expedite the consultation, the Lead Agency, a Responsible Agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the Lead Agency in determining the scope and content of the environmental information which the Responsible Agency may require. Such meetings shall be convened by the Lead Agency as soon as possible, but no later than 30 days, after the meetings were requested.

(f) After completing the draft EIR or Negative Declaration, the Lead Agency shall also consult with and seek to obtain comments from each Responsible Agency and other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

(g) When one or more state agencies will be a Responsible Agency, the Lead Agency shall send a Notice of Preparation by certified mail to each state Responsible Agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state Responsible Agencies reply to the Lead Agency within the required time.

History: 1. Repealer and new section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 7, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15067. Subsequent EIR. (a) Where an EIR or Negative Declaration has been prepared, no additional EIR need be prepared unless:

(1) Subsequent changes are proposed in the project which will require major revisions of the EIR, due to the involvement of new environmental impacts not considered in a previous EIR on the project, or

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken, such as a substantial deterioration in the air quality where the project will be located, which will require major revisions in the EIR due to the involvement of new environmental impacts not covered in a previous EIR, or

(3) New information of substantial importance to the project becomes available, and

(A) The information was not known and could not have been known at the time the EIR was certified as complete or the Negative Declaration was adopted, and

(B) The new information shows any of the following:

1. The project will have one or more significant effects not discussed previously in the EIR,

2. Significant effects previously examined will be more severe than shown in the EIR,

3. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, or

4. Mitigation measures or alternatives which were not previously considered in the EIR would substantially lessen one or more significant effects on the environment.

(b) If the EIR or Negative Declaration has been completed but the project has not yet been approved, the Lead Agency shall prepare or cause to be prepared the subsequent EIR before approving the project.

(c) If the project was approved prior to the occurrence of the conditions described in Subsection (a), the subsequent EIR shall be prepared by the public agency which grants the next discretionary approval for the project. In this situation no other Responsible Agency shall grant an approval for the project until the subsequent EIR has been completed.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15068. Use of a Single EIR. The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead Agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should supplement the EIR it prepares for a program to apply it to an individual project.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15068.5. Use of a General Plan EIR With Subsequent Projects. The EIR on a general plan may be used as the foundation document for EIRs subsequently prepared for specific projects within the geographic area covered by the general plan. The subsequent EIRs may reference and summarize material in the EIR on the general plan for the description of the general environmental setting and as much of the description of the environmental impacts as applies to the specific project. Detailed information in the EIR on the specific project may be limited to a description of the project, the specific environmental setting and those impacts which are not adequately described for the specific project in the EIR on the general plan. When a subsequent EIR refers to an EIR on the general plan for part of its description of the environment and the environmental impacts, copies of the EIR on the general plan shall be made available to the public in a number of locations in the community and to any clearinghouses which will assist in public review of the EIR. The purpose of this section is not to restrict analysis of environmental issues but is to avoid the necessity for repeating detail from a General Plan EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069. Multiple and Phased Projects. Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designat1248t compliance with this amendment is authorized but not mandatory before 1-1-77.

15069.5. Staged EIR. (a) Where a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than 2 years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR should evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the Lead Agency for a project and requires the Lead Agency to prepare an EIR, a Responsible Agency which must grant an approval for the project before the Lead Agency has completed the EIR may prepare and consider a staged EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History: 1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069.6. Master Environmental Assessment. (a) **General.** A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or Negative Declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these Guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the State.

(b) **Contents.** A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) **Preparation.**

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a MEA may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) **Uses.**

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and locations of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIR's and Negative Declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIR's and Negative Declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Article 6.5. Statutory Exemptions

15070. Ongoing Project. (a) A project as defined in Section 15037(a)(1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any draft EIR which has been completed or sent out for public review on or before January 1, 1977, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in February 1975, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

(d) Any project approved before February 7, 1975, by a local agency formation commission without complying with CEQA is declared legally effective unless:

(1) The legality of the project was contested in a legal proceeding in which a violation of CEQA was alleged prior to February 7, 1975, and the case was pending and undecided by February 7, 1975, or (P.R.C. 21176(a)).

(2) The project was determined to be illegal, void, or ineffective because of noncompliance with CEQA in any judicial proceeding decided before July 6, 1975. (P.R.C. 21176(b))

(e) Any draft EIR or Negative Declaration which has been completed and sent out for public review before January 1, 1978, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in December 1976, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a), (b) or (c) in Section 15067.

History: 1. New subsection (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history, see Register 76, No. 41.

15071. Emergency Projects. The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Specific actions necessary to prevent or mitigate an emergency.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15072. Feasibility and Planning Studies. A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects. (a) Ministerial projects are exempt from the requirements of CEQA, and no environmental documents are required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. (P.R.C. 21080(b)).

(b) In the absence of any discretionary provision contained in the relevant local ordinance, it shall be presumed that the following actions are ministerial:

(1) Issuance of building permits.
(2) Issuance of business licenses.
(3) Approval of final subdivision maps.
(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15074. Notice of Exemption. (a) When a public agency determines that a project is exempt from the requirements of CEQA because it is an emergency project, a ministerial project or categorically exempt, and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include (1) a brief description of the project, (2) a finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and (3) a brief statement of reasons to support the findings.

(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.

(c) When a state agency files this notice, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 Ninth Street, Sacramento, California. Each such list will remain posted for 30 days.

(d) When a local agency files this notice, the notice of exemption will be filed with the county clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

History: 1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 7-23-74 (Register 74, No. 26).
3. Amendment of subsections (b), (c) and (d) filed 2-5-75; effective thirtieth day

15075. Projects Which Are Disapproved. (a) CEQA does not apply to projects which a public agency rejects or disapproves. [P.R.C. Section 21080(b) (5)]

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or Negative Declaration prepared for his project prior to the Lead Agency's disapproval of the project after normal evaluation and processing.

History: 1. Renumbering of former Section 15075 to Section 15151 and new Section 15075 filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history of former Section 15075 see Register 76, No. 41.

15076. Early Activities Related to Power Plants. CEQA does not apply to actions undertaken by a public agency relating to any power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the purchase of equipment, fuel, steam, or power for such a power plant, if the power plant site and related facility will be the subject of an Environmental Impact Report or Negative Declaration prepared by:

(a) The State Energy Resources Conservation and Development Commission,

(b) The Public Utilities Commission, or

(c) The city or county in which the power plant and related facility would be located [P.R.C. Sec. 21080(b) (6)].

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15077. Olympic Games. CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games [P.R.C. Sec. 21080(b) (7)]. If such facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the Lead Agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15078. Timberland Preserves. Local agencies are exempt from the requirement to prepare an Environmental Impact Report or Negative Declaration on the adoption of timberland preserve zones under Government Code Sections 51100 *et seq.* (Gov. Code, Sec. 51119).

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15079. Discharge Requirements. The State Water Resources Control Board and the regional boards are exempt from CEQA in the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act. (Water Code Sec. 13389)

History: 1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Article 7. Evaluating Projects

15080. Initial Study. (a) If a project is subject to the requirements of CEQA and not exempted by these Guidelines, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment unless the Lead Agency can determine that the project will cle ly have a significiant effect. If any aspects of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an EIR must be prepared. All phases of project planning, implementation, and operation must be considered in the Initial Study of the project. To meet the requirements of this section, the Lead Agency may use an Initial Study prepared pursuant to the National Environmental Policy Act.

(b) **Purposes.** The purposes of an Initial Study are to:

(1) Identify environmental impacts;

(2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;

(3) Focus an EIR, if one is required, on potentially significant environmental effects;

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs.

(c) **Contents.** An Initial Study shall contain in brief form:

(1) A description of the project,

(2) An identification of the environmental setting,

(3) An identification of environmental effects by use of a checklist, matrix, or other method,

(4) A discussion of ways to mitigate the significant effects identified, if any,

(5) An examination of whether the project is compatible with existing zoning and plans,

(6) The name of the person or persons who prepared or participated in the Initial Study.

(d) **Uses.** (1) The Initial Study shall be used to provide a written determination of whether a Negative Declaration or an EIR shall be prepared for a project.

(2) Where a project is revised in response to an Initial Study so that potential adverse effects are mitigated to a point where no significant environmental effects would occur, a Negative Declaration shall be prepared instead of an EIR. If the project would still result in one or more significant effects on the environment after mitigation measures are added to the project, an EIR shall be prepared.

(3) The EIR shall emphasize study of the impacts determined to be significant and can omit further examination of those impacts found to be clearly insignificant in the Initial Study.

(e) **Submission of Data.** If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study.

(f) **Format.** Sample forms for an applicant's project description and a review form for use by the Lead Agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an Initial Study. These forms are only suggested, and public agencies are free to devise their own format for an Initial Study.

(g) **Consultation.** As soon as a Lead Agency has determined that a project is not exempt and that an initial study will be required to determine whether a Negative Declaration or an EIR is required, the Lead Agency shall consult with all Responsible Agencies as required by Section 15066(b).

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. New subsection (g) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15081. Determining Significant Effect. (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

History: 1. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77. For prior history, see Register 75, No. 44.

15082. Mandatory Findings of Significance. A project shall be found to have a significant effect on the environment if:

(a) The project has the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

History: 1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15083. Negative Declaration. (a) **General.** A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Lead Agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) **Consultation.** Before completing a Negative Declaration, the Lead Agency shall consult with all Responsible Agencies pursuant to Section 15066. This consultation may take place during the public review period required by Subsection (e) of this section.

Article 12. Exemption for Certified State Regulatory Programs

Section
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Appendices

Appendix A. Flow Chart
Appendix B. Statutory Authority of State Departments
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Article 1. General

15000. Authority.

The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commisions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New Chapter 8, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).

15001. Short Title.

These Guidelines may be cited as the "State EIR Guidelines."

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15002. General Concepts.

(a) Governmental Action. CEQA applies to governmental action. This action may involve:

(1) Activities directly undertaken by a governmental agency,

(2) Activities financed in whole or in part by a governmental agency, or

(3) Private activities which require approval from a governmental agency.

(b) Private Action. Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.

(c) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. See Section 15037.

(d) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. See Section 15013.

(e) Environmental Impact Reports and Negative Declarations. An environmental impact report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage. When an agency finds that a project will have no significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR.

(1) For a definition of "environmental impact report", see Section 15027.

(2) For the process of using an EIR, see Sections 15080–15089.

(3) For the contents of an EIR, see Sections 15140–15151.

(4) For possible approaches in writing EIRs, see Sections 15067–15069.6.

(5) For a definition of "Negative Declaration", see Section 15033.

(6) For the use of a Negative Declaration, see Section 15083.

(f) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:

(1) Changing a proposed activity;

(2) Imposing conditions on the approval of the activity;

(3) Adopting plans or ordinances to control a broader class of activities to avoid the problems;

(4) Choosing an alternative way of meeting the same need;

(5) Disapproving the project, or

(6) Finding that changes in, or alterations, the project are not feasible.

(7) Finding that the unavoidable, significant environmental damage is acceptable as provided in Section 15089.

(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. An EIR must be prepared when a project may have a significant effect on the environment. Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether there are feasible ways available to avoid or reduce the adverse environmental effects.

(1) For a definition of the term "significant" effect on the environment, see Section 15040.

(2) For the process of deciding whether an effect is significant, see Sections 15080–15084 and Appendices H and I.

(3) For examples of effects that are often found to be significant, see Appendix G.

(4) For findings which must be made on significant effects found in an EIR, see Sections 15088 and 15089.

(h) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to approve a project. Environmental information can be helpful only where government has authority to respond to the information.

(1) For a definition of a "discretionary project" which is subject to CEQA, see Section 15024.

(2) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial", and CEQA does not apply. See Sections 15032 and 15073.

(3) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another.

(i) Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project.

(1) For requirements for consulting with other agencies, see Section 15066.

(2) For public notice requirements, see Sections 15083(d) and 15085(d).

(3) For public participation generally and public hearings, see Sections 15164 and 15165.

(4) For the required response to comments, see Section 15146(b).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 2. Purpose

15005. Purpose.

The purpose of these Guidelines is to provide public agencies with principles, objectives, criteria, and definitions of statewide application to be used in the implementation of the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. These Guidelines are binding on all public agencies.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15006. Basic Purposes of CEQA.

The basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify ways that environmental damage can be avoided or significantly reduced,

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21002, 21002.1, Public Resources Code; *E.D.F. v. Coastside County Water District*, 27 Cal. App. 695; *People v. County of Kern*, 39 Cal. App. 830; *Laurel Hills Homeowners Association v. City Council*, 88 Cal. App. 3d 515.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 3. Policy

15010. Legislative Declaration.

The Legislature has declared that:

(a) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(b) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

15011. State Policy.

The Legislature has declared that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

15011.5. Additional Policies.

The courts of this state have found the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc.* v. *City of Los Angeles*, 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works* v. *Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People* v. *County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth* v. *Board of Supervisors*, 8 C. 3d 247.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15011.6. State Policies Regarding Use of Environmental Impact Reports.

The Legislature has declared that the following policies shall apply to the use of environmental impact reports:

(a) The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which such significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out to the extent it is feasible to do so.

(c) In the event that economic, social, technical, or other conditions make it infeasible to mitigate one or more significant effects of a project on the environment, such project may nonetheless be approved or carried out at the discretion of a public agency, provided that the project is otherwise permissible under applicable laws and regulations.

(d) Environmental impact reports should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

(e) Information developed in individual environmental impact reports should be incorporated into a data base which can be used to reduce delay and duplication in preparation of later environmental impact reports.

(f) The EIR process is intended to enable public agencies in evaluating projects to determine whether a project may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to a project as proposed. These steps of analysis and evaluation must be completed prior to approval of the project.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15012. Informational Document.

An Environmental Impact Report is an informational document which, when fully prepared in accordance with the CEQA and these Guidelines, will inform public decision-makers and the general public of the environmental effects of projects they propose to carry out or approve. The information in an EIR constitutes evidence that a public agency shall consider along with any other information which may be presented to the agency. While CEQA requires that major consideration be given to preventing environmental damage, it is recognized that public agencies have obligations to balance other public objectives, including economic and social factors in determining whether and how a project should be approved.

(b) Economic information may be included in an EIR or may be presented in whatever form the agency desires.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15013. Time of Preparation.

(a) Environmental documents are useful planning tools to enable environmental constraints and opportunities to be considered before project plans are finalized.

(b) Environmental documents should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design and planning.

(2) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review and project approval processes being used by each public agency. When the Lead Agency is a State Agency, the environmental document shall be included as part of the regular project report which is used in its existing review and budgetary process.

HISTORY:

1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15014. Applicability.

(a) These Guidelines have only general application to the diversity of projects undertaken or approved by public agencies. They provide basic principles, objectives, criteria and definitions which individual public agencies shall adapt for internal use, interpreting these Guidelines in terms of specific projects.

(b) Until April 1, 1975, the objectives, criteria, and procedures adopted by public agencies in compliance with CEQA and these Guidelines may continue to govern the evaluation of projects and the preparation of environmental documents without being brought into conformity with the amendments to these Guidelines adopted by the Secretary for Resources in December, 1974. However, the amendment to Section 15143(c) dealing with mitigation measures, must be complied with effective January 7, 1975, regardless of whether its provisions have been included in the procedures being used by a public agency.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (b) filed 1-18-74 as an emergency; effective upon filing (Register 74, No. 3).
3. Amendment of subsection (b) filed 1-25-74 as an emergency; effective immediately upon filing. Certificate of Compliance included (Register 74, No. 4).
4. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
5. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

15015. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15016. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15013)

(b) Ensuring the swift and fair resolution of lead agency disputes. (15065.5)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15100.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15080)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15083)

(f) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15066)

(g) Allowing applicants to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15080(d)(2)).

(h) Integrating CEQA requirements with other environmental review and consultation requirements. (Public Resources Code Section 21080.5)

(i) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15083)

(j) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15066)

(k) Combining environmental documents with other documents such as general plans. (15148)

(l) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from statement of broad scope to those of narrower scope. (15066.5)

(m) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15140.5)

(n) Preparing analytic rather than encyclopedic environmental impact reports. (15140)

(o) Mentioning only briefly issues other than significant ones in EIRs. (15143.5)

(p) Writing environmental impact reports in plain language. (15140)

(q) Following a clear format for environmental impact reports. (15140)

(r) Emphasizing the portions of the environmental impact report that are useful to decisionmakers and the public and reducing emphasis on background material. (15140(e))

(s) Using incorporation by reference. (15149)

(t) Making comments on environmental impact reports as specific as possible. (15085.5(d))

NOTE: Authority cited: Section 21083, Public Resources Code. References: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 4. Definitions

15020. General.

Whenever the following words are used in these Guidelines, unless otherwise defined, they shall have the meaning ascribed to them in this article. These definitions are intended to clarify but not to replace or negate the definitions used in CEQA.

15020.5. Applicant.

Applicant means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement to use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15021. Approval.

Approval means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

In connection with private activities, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

15022. CEQA—California Environmental Quality Act.

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

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15023. Categorical Exemption.

Categorical Exemption means an exception from the requirements of CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15023.5. Cumulative Impacts.

Cumulative impacts refer 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 reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

(c) A discussion of cumulative impacts shall reflect their severity and significance but need not be discussed in as great detail as the direct effects of the project. The discussion of cumulative impacts should be guided by a standard of practicality and reasonableness. The following (three) elements are necessary to an adequate discussion of cumulative impacts:

(1) A list of projects producing related or cumulative impacts, including those projects outside the control of the agency,

(2) A summary of the expected environmental effects to be produced by those projects with specific referenced to additional information where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176, Public Resources Code, and *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

2. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15023.7. Decision Making Body.

"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.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15024. Discretionary Project.

Discretionary project means an activity defined as a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency or body in the process of approving or disapproving 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. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code § 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. § 21065(c).

HISTORY:

1. Amendment filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).

15025. Emergency.

Emergency means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15026. Environment.

Environment means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15026.5. Environmental Documents.

Environmental documents means Draft and Final EIRs, Initial Studies, Negative Declarations, Notices of Completion, and Notices of Determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included. (Register 73, No. 50).

15027. EIR—Environmental Impact Report.

Environmental Impact Report (EIR) means a detailed statement setting forth the environmental effects and considerations pertaining to a project as specified in Section 21100 of the California Environmental Quality Act, and may mean either a draft or a final EIR.

(a) Draft EIR means an EIR containing the information specified in Sections 15141, 15142, and 15143 of these Guidelines. Where a Lead Agency consults with Responsible Agencies in the preparation of a draft EIR, the draft EIR shall also contain the information specified in Section 15144.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15146.

HISTORY:

1. Amendment of subsection (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15028. EIS—Environmental Impact Statement.

Environmental Impact Statement (EIS) means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). The Federal Government uses the term EIS in the place of the term EIR which is used in CEQA.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15029. Feasible.

Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

HISTORY:

1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15029.5. Initial Study.

Initial study means a preliminary analysis prepared by the lead agency pursuant to Section 15080 to determine whether an EIR or a Negative Declaration must be prepared.

NOTE: Authority cited: Sections 21083 and 21174, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15029.6. Jurisdiction by Law.

(a) Jurisdiction by law means the authority of any public agency

(1) to grant a permit or other entitlement for use,

(2) to provide funding for the project in question, or

(3) to exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is the site of the project, the area in which the major environmental effects will occur, and/or the area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15039, or the Lead Agency, see Section 15030.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

2. Amendment of subsection (a) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

3. Amendment of subsection (b) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15030. Lead Agency.

Lead Agency means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will prepare the environmental documents for the project either directly or by contract. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15065.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15031. Local Agency.

Local agency means any public agency other than a state agency, board or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special district, redevelopment agencies, local agency formation commissions and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

HISTORY:

1. Amendment filed 12-14-73 as an emergency, effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15032. Ministerial Projects.

Ministerial projects as a general rule, include those activities defined as projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer. In summary, a ministerial decision involves only the use of fixed standards or objective measurements without personal judgment.

HISTORY:

1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15032.5. Mitigation.

Mitigation includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15033. Negative Declaration.

Negative declaration means a written statement by the Lead Agency briefly describing the reasons that a proposed project, although not otherwise exempt, will not have a significant effect on the environment and therefore does not require the preparation of an EIR.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15034. Notice of Completion.

Notice of Completion means a brief notice filed with the Secretary for Resources by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085(c). A copy of this notice appears in Appendix C.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035. Notice of Determination.

Notice of Determination means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15083(d) and 15085(h). A copy of this notice appears in Appendix D.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.5. Notice of Exemption.

Notice of Exemption means a brief notice which may be filed by a public agency when it has approved or determined to carry out a project, and it has determined that it is ministerial, categorically exempt or an emergency project. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Sec. 15074(a) and (b). A copy of this notice appears in Appendix E.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

HISTORY:

1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15035.7. Notice of Preparation.

Notice of Preparation means a brief notice sent by a Lead Agency by certified mail to notify the Responsible Agencies that the Lead Agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from the Responsible Agencies as to the scope and content of the environmental information to be included in the EIR. A sample form is included as Appendix J to these Guidelines. Public Agencies are free to develop their own formats for this notice.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15036. Person.

Person includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the State, and any of the agencies' political subdivisions of such entities.

15037. Project.

(a) Project means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law.

(2) Proposals for legislation to be enacted by the State Legislature.

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above), feasibility or planning studies.

(4) The submittal of proposals to a vote of the people of the State or of a particular community.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, 8 Cal. 3d 247.

HISTORY:

1. Amendment of subsection (a) (1) and new subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment of subsection (b) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15038. Public Agency.

Public agency includes any state agency, board or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the State. This term does not include agencies of the federal government.

15039. Responsible Agency.

Responsible agency means a public agency which proposes to carry out or approve a project, for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15040. Significant Effect on the Environment.

Significant effect on the environment means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

HISTORY:

1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15041. Tiering.

"Tiering" refers to the coverage of general matters in broad scope or program EIRs with subsequent narrower environmental documents (such as site-specific EIRs) incorporating by reference the general discussions and concentrating solely on the issues specific to the environmental document subsequently prepared.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15042. Trustee Agency.

"Trustee agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include:

(a) The California Department of Fish and Game with regard to the fish and wildlife of the state.

(b) The State Lands Commission with regard to state owned "sovereign" lands.

(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserve System.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3 and 21080.4, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15043. Urbanized Area.

"Urbanized area" means a central city or a group of contiguous cities with a 1970 population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile as periodically designated by the U.S. Bureau of the Census. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301-3466.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 5. General Responsibilities

15050. Public Agency Implementation.

(a) Each public agency is responsible for complying with CEQA and these Guidelines. Each public agency must develop its own procedures consistent with these Guidelines.

(b) Where a public agency is a Lead Agency and prepares an EIR itself, contracts for the preparation, or accepts data and information in the form of a draft EIR from an applicant, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

(c) Public agencies shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for the orderly evaluation of projects and the preparation of environmental documents. These implementing procedures should contain at least the following provisions:

(1) Procedures for identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be categorically exempt pursuant to Section 15100.4.

(2) Procedures for the conduct of initial studies.

(3) Provisions for the preparation of Negative Declarations.

(4) Provisions for the preparation of EIR's.

(5) Provisions for consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Provisions assuring adequate opportunity and time for the public review and comment on the Draft EIR or Negative Declaration.

(7) Provisions for evaluating and responding to comments received on environmental documents.

(8) Provisions for the review and consideration of environmental documents by the person or decision-making body who will approve or disapprove a project.

(9) Provisions for filing documents required or authorized by CEQA and these Guidelines.

(10) Provisions to ensure that Lead Agencies obtain adequate comments on environmental documents which they submit to the public agency for review.

(11) The assignment of responsibility for specific functions to specific units of the public agency.

(12) Time periods for performing functions under CEQA as described in Section 15054.2.

(d) Any district, including a school district, need not adopt objectives, criteria and procedures of its own if it uses the objectives, criteria and procedures of another public agency whose boundaries are coterminous with the district. Any public agency may adopt the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass its own.

(e) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 60 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(f) In adopting procedures to implement CEQA, a public agency may adopt the State EIR Guidelines by incorporation by reference. The agency would then need to adopt only those specific procedures or provisions described in subsection (c) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21082, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (d) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. New subsections (c) (12) and (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
5. New subsection (f) filed 5-5-80; effective thirtieth day thereafter (Register 80, No. 19).

15051. Office of Planning and Research (OPR).

(a) OPR is responsible for the preparation and development of principles, objectives, criteria, and definitions to implement the CEQA, prior to adoption by the Secretary for Resources. OPR also, as part of guideline development, shall consider proposals for Categorical Exemption and make appropriate recommendations to the Secretary for Resources.

(b) The State Clearinghouse in the Office of Planning and Research is responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(c) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in determining the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(d) OPR has responsibility for ensuring that State Responsible Agencies provide the necessary information to Lead Agencies in response to Notices of Preparation within the 45 day period as specified in Section 15066(d).

(e) OPR will resolve disputes as to which agency is the Lead Agency for a project as described in Section 15065.5.

HISTORY:

1. New subsection (b) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15052. The Secretary for Resources.

The Guidelines shall be officially adopted by the Secretary for Resources, including a finding that each class of projects given a Categorical Exemption will not have a significant effect on the environment. The Secretary also has the responsibility for consolidating all state comments on federally sponsored projects. The Secretary for Resources may issue amendments to these Guidelines.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15053. Fees.

(a) All Lead Agencies preparing EIRs or Negative Declarations for projects to be carried out by any person other than the Lead Agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or Negative Declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15054. Timely Compliance.

Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

15054.1. Projects With Short Time Periods for Approval.

(a) A few statutes require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the Lead Agency to comply with both the permit statute and CEQA, the Lead Agency shall deem an application for a project not received for filing under the permit statute until such time as the environmental documentation required by CEQA has been completed. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the Lead Agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the Lead Agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a tentative subdivision map by a local government within 50 days pursuant to Article 2 (commencing with Section 66452) of Chapter 3, Division 2, Title 2 of the Government Code.

(2) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code.

(3) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(4) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Section 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the application shall be made within one year from the date on which an application requesting approval of such project has been received and accepted as complete for CEQA processing by such agency. This one-year time limit may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: *Natural Resources Defense Council, Inc.*, v. *Arcata National Corporation*, 59 Cal. App. 3d 959 (1976).

HISTORY:

1. New section filed 1-30-75 as an emergency; effective upon filing (Register 75, No. 5).
2. Certificate of Compliance filed 5-29-75 (Register 75, No. 22).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15054.2. Lead Agency CEQA Time Limits.

(a) Each public agency shall include in its implementing procedures time periods for performing the functions described in this section.

(b) When the public agency is acting as a Lead Agency for a project for which the agency will grant a lease, license, permit, certificate, or other entitlement for use, the agency shall complete and certify an EIR in not more than one year or complete a Negative Declaration in not more than 105 days.

(1) Completion of a Negative Declaration within a 105 day period shall include the conduct of an initial study, public review, and the preparation of a document ready for approval by the decision making body of the public agency. Completion within the 105 day period need not include the approval of the Negative Declaration by the decision making body. Prior to approving a project, the decision making body shall consider and approve the Negative Declaration.

(2) Different time limits may be established for different types of projects subject to the 105 day and one year maximum time limits.

(3) The time limits shall be measured from the date on which an application requesting approval for the project is received and accepted as complete by the agency.

(A) State agencies are required to adopt lists and criteria by which to determine the completeness of an application. (Government Code Sections 65940 and 65941.)

(B) Local agencies may adopt lists and criteria by which to determine the completeness of applications. Different lists and criteria may be developed for different kinds of projects.

(4) The procedures may provide for a reasonable extension of the CEQA time periods under this subsection in the event that compelling circumstances justify additional time and the project applicant agrees to the extension.

(5) The Lead Agency may waive the one year time period or the 105 day period if all the following conditions occur:

(A) The project will require both an EIR or a Negative Declaration under CEQA and an EIS or a Finding of No Significant Impact under the National Environmental Policy Act,

(B) Additional time will be required to prepare a combined EIR-EIS or a combined Negative Declaration under both laws,

(C) The time required to prepare such a combined document would be less than the time required to prepare each document separately, and

(D) The applicant has requested or consented to the waiver.

(6) If the Lead Agency waives the time periods as provided in Subsection (5), the Lead Agency must approve or disapprove the project within 60 days after the combined document under CEQA and NEPA has been completed. (Government Code Section 65951.)

(c) Within 45 days after accepting an application as complete for a project involving issuance of a lease, permit, license, certificate, or other entitlement for use, a Lead Agency shall make an initial determination of whether the project will need an EIR or a Negative Declaration.

(d) A Lead Agency shall convene a meeting with one or more Responsible Agencies to discuss the scope and content of a proposed EIR as soon as possible but not later than 30 days after the meeting is requested as provided in Section 15066(e).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsection (b) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15054.3. Responsible Agency CEQA Time Limits.

As soon as possible after receiving a Notice of Preparation and in no event more than 45 days after receiving the notice, a Responsible Agency shall inform the Lead Agency of the scope and content of the environmental information that the Responsible Agency would need in the EIR.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15055. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determination of whether a project is exempt.

(2) Conduct of an initial study.

(3) Preparation of a Negative Declaration or EIR.

(4) Determination that a Negative Declaration has been completed within a period of 105 days.

(5) Preparation of responses to public comments.

(6) Certification that the decision making body has reviewed and considered an EIR or Negative Declaration.

(7) Filing of Notices.

(b) The decision making body of a public agency may not delegate the following functions:

(1) Review and consideration of a final EIR or Negative Declaration prior to approving a project.

(2) The making of findings as required by Sections 15088 and 15089.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decision making body, the advisory body shall also review and consider the EIR or Negative Declaration.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: *Kleist* v. *City of Glendale*, 56 Cal. App. 3d 770.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsection (a) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 6. Application of the Act to Projects

15060. General Rule.

The requirements set forth in these Guidelines apply to projects which may have a significant effect on the environment and which involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15061. Projects Controlled by State or Local Agencies.

(a) When a public agency plans to carry out or approve a project which is subject to CEQA, which may have a significant effect on the environment, the EIR or Negative Declaration for the project shall be prepared directly by, or under contract to, a public agency.

(b) Where a project which is subject to CEQA is to be carried out by a nongovernmental person subject to approval, financial support, or some other involvement by a public agency, the EIR or Negative Declaration shall be prepared directly by, or under contract to, the Lead Agency. However, the Lead Agency may require the person to supply data and information, both to determine whether the project may have a significant effect on the environment, and to assist in the preparation of an EIR or Negative Declaration by the Lead Agency. This information may be submitted in the form of a draft EIR if the Lead Agency desires. If information is provided in the form of a draft EIR or Negative Declaration, the Lead Agency may not use the document as its own without independent evaluation and analysis. The draft EIR or Negative Declaration which is sent out for public review must reflect the independent judgment of the Lead Agency. The Lead Agency should require an applicant to specify to the best of his knowledge which other public agencies will have jurisdiction by law over the project.

(c) Where the project is to be undertaken by a local agency, as defined in these Guidelines, but requires state approval or financial assistance, the state agency shall require the local agency to prepare the EIR or Negative Declaration, to be submitted with the request for approval of the proposed project. This must also be done where federal funds are involved, but only if a state agency has discretionary authority over the use of those funds. If the local project has been mandated on the local agency by a state agency, the EIR prepared by the local agency may be limited to consideration of those factors and alternatives which do not conflict with the order.

(d) The EIR may be prepared as a separate document, or as part of a project report. If prepared as a part of the project report, it must still contain in one separate and distinguishable section the elements required of an EIR, including the seven elements specified in Section 15143 of these Guidelines.

(e) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(f) All of the above is subject to the Lead Agency principle which provides that not more than one EIR shall be prepared in connection with the same underlying activity and that the EIR shall be prepared by the lead agency.

(g) Any person may submit information to the Lead Agency to assist in the preparation of an EIR or Negative Declaration. Such information may be submitted in any format and may be included in whole or in part in any such EIR or Negative Declaration if the Lead Agency subjects the information to its own independent evaluation and analysis.

HISTORY:

1. Amendment of subsections (a), (b) and (f) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (b) filed 1-8-75; designated effective 4-1-75 (Register 75, No. 1).
3. New subsection (g) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15062. Private Projects.

HISTORY:

1. Repealer filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15063. Federal Projects.

(a) When a State Agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include a discussion of the material specified in Section 15143.

(b) When an EIR is required by CEQA and a federal EIS has been or will be prepared for the same project, all or any part of the EIS may be used as all or any part of the EIR if the EIS or part used complies with these Guidelines. In cases where a federal EIS is used, discussion of mitigation measures, growth-inducing impact, and energy conservation will have to be added or supplemented if the EIS does not include an adequate discussion of these elements.

(c) When a project requires both an EIR and an EIS, the Lead Agency shall whenever possible, use the EIS as the EIR as provided in subsection (b).

(d) If a Lead Agency finds that an EIS for a project would not be prepared by the Federal Agency by the time when the Lead Agency will need to consider an EIR, the Lead Agency should try to prepare a combined EIR-EIS. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the EIR-EIS. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state or local agency unless the federal agency was involved in the preparation of the document.

(e) When it plans to use an EIS or prepare a joint EIR-EIS, the Lead Agency shall consult as soon as possible with the agency that would prepare the EIS.

(f) Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15054.2.

(g) Where the federal agency circulated the EIS for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15085 (d), the Lead Agency under CEQA need not recirculate the EIS for public review. One review and comment period is enough. The Lead Agency shall give notice that it will use the EIS in the place of an EIR and that it believes that the EIS meets the requirements of CEQA.

(h) State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(1) Joint planning processes,
(2) Joint environmental research and studies,
(3) Joint public hearings,
(4) Joint environmental documents.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5, 21083.6, and 21083.7.

HISTORY:

1. Amendment filed 12-14-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
5. New subsection (h) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15064. Lead Agency Principle.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparation of environmental documents, and it will be the Lead Agency. Such environmental documents will be prepared by the Lead Agency in consultation with all responsible Agencies.

(b) The Lead Agency's environmental documents shall be the environmental documentation for all responsible agencies. Except as provided in Section 15069.5(c), such responsible agencies shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the projects, and they shall certify that their decision-making bodies have reviewed and considered the information contained in them.

(c) The determination of the Lead Agency of whether to prepare an environmental impact report or a negative declaration shall be final and conclusive on all persons, including Responsible Agencies, as provided by Section 21080.1 of the Public Resources Code, unless:

(1) The decision is challenged as provided in Section 21167 of the Public Resources Code, or
(2) Circumstances change as provided in Section 15067.

(d) Where a decision making body has power to make a final decision on a project subject to appeal to another body, the decision making body shall review and consider the EIR. The appeal body shall also review and consider the EIR before deciding an appeal from a decision on the project.

HISTORY:

1. Amendment filed 12-14-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15065. Lead Agency Criteria.

Where two or more public agencies are involved with a project, which agency shall be the Lead Agency shall be determined by the following principles:

(a) If the project is to be carried out by a public agency, the Lead Agency shall be the public agency which proposes to carry out the project.

(b) If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will generally be the agency with general governmental powers rather than an agency with a single or limited purpose which is involved by reason of the need to provide a public service or public utility to the project; in such cases, the single or limited purpose agency will, upon request, provide data concerning all aspects of its activities required to furnish service to the project to the agency drafting the EIR, and no separate EIR will be required in regard to such activities.

(2) Where a city has prezoned an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the required environmental document at the time of the prezoning. The city shall consult with the local agency formation commission, and the EIR shall include the comments of the local agency formation commission.

(c) Where more than one public agency equally meet the criteria set forth in paragraph (b) above, the agency which is to act first on the project in question shall be the Lead Agency (following the principle that the environmental impact should be assessed as early as possible in governmental planning).

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the Lead Agency, the public agencies may by agreement designate which agency will be the Lead Agency. An agreement may also provide for cooperative efforts by two or more agencies, joint exercise of powers, or similar devices.

HISTORY:

1. Amendment of subsection (d) and repealer of subsection (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history, see Register 76, No. 41.

15065.3. Shift in Lead Agency Responsibilities.

(a) Where a Responsible Agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate Lead Agency, the Responsible Agency shall begin to act as the Lead Agency when any of the following conditions occur:

(1) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(2) The Lead Agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15067,

(B) The Lead Agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the Lead Agency's action under CEQA has expired.

(3) The Lead Agency prepared inadequate environmental documents without consulting with the Responsible Agency as required by Section 15066 and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(b) When a Responsible Agency assumes the duties of a Lead Agency under this section, the time limits applicable to a Lead Agency shall apply to the actions of the agency.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15065.5. Designation of Lead Agency by Office of Planning and Research.

(a) In the event that the designation of a Lead Agency is in dispute, the following criteria shall apply:

(1) Public agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR.

(2) If an agreement cannot be reached, any public agency, or in the case of a project described in subdivision (c) of Section 21065 of the Public Resources Code, the applicant for such project may submit the dispute to the OPR for resolution.

(b) OPR shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute from any public agency or from the applicant pursuant to subsection (a) (2).

(c) Regulations adopted by OPR for resolving Lead Agency disputes may include the following:

(1) Submission of written statements to OPR and other disputing public agencies;

(2) Certification by OPR that a Lead Agency dispute exists;

(3) Publication of notice that a dispute has been submitted to OPR;

(4) Determination of the dispute on the basis of written statements or by a hearing.

(d) Designation of a Lead Agency by OPR shall be based on consideration of the criteria in Section 15065 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15066. Consultation.

(a) General. When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all Responsible Agencies before completing a draft EIR or Negative Declaration. Consultation is designed to insure that the EIR or Negative Declaration will reflect the concerns of all Responsible Agencies which will issue approvals for the project.

(b) Determining Significant Effect. Prior to determining whether a negative declaration or environmental impact report is required for a project, the Lead Agency shall consult with all Responsible Agencies and with any Trustee Agencies responsible for natural resources affected by the project. This first step of consultation may be done quickly and informally.

(c) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the Lead Agency shall send to each Responsible Agency a Notice of Preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to those Trustee Agencies responsible for natural resources affected by the project.

(1) The Notice of Preparation shall provide the Responsible Agencies with sufficient information describing the project and the environmental effects to enable the Responsible Agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15′ or 7½′ topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample format for a Notice of Preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the Initial Study may be sent with the notice to supply the necessary information.

(3) The Lead Agency may begin work on the draft EIR immediately without awaiting responses to the Notice of Preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the Notice of Preparation.

(4) To send copies of the Notice of Preparation, the Lead Agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(d) Response to Notice of Preparation. After receiving the Notice of Preparation under subparagraph (c), each Responsible Agency shall provide the Lead Agency with specific detail about the scope and content of the environmental information related to the Responsible Agency's area of statutory responsibility which must be included in the draft EIR. The response at a minimum shall identify the significant environmental issues and possible alternatives and mitigation which the responsible agency will need to have explored in the draft EIR.

(e) Meetings. In order to expedite the consultation, the Lead Agency, a Responsible Agency, a Trustee Agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the Lead Agency in determining the scope and content of the environmental information which the Responsible Agency may require. Such meetings shall be convened by the Lead Agency as soon as possible, but no later than 30 days, after the meetings were requested.

(f) Review of Documents. After completing the draft EIR or Negative Declaration, the Lead Agency shall also consult with and seek to obtain comments from each Responsible Agency and other public agencies having jurisdiction by law and should consult with persons having special expertise as described in Sections 15083 and 15085.

(g) State Clearinghouse. When one or more state agencies will be a Responsible Agency, the Lead Agency shall send a Notice of Preparation to each state Responsible Agency and each Trustee Agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state Responsible Agencies and Trustee Agencies reply to the Lead Agency within the required time.

(h) When the Notice of Preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the Notice of Determination.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.3 and 21080.4, Public Resources Code.

HISTORY:

1. Repealer and new section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 7, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15067. Subsequent EIR.

(a) Where an EIR or Negative Declaration has been prepared, no additional EIR need be prepared unless:

(1) Subsequent changes are proposed in the project which will require important revisions of the EIR, due to the involvement of new significant environmental impacts not considered in a previous EIR on the project.

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken, such as a substantial deterioration in the air quality where the project will be located, which will require important revisions in the EIR due to the involvement of new significant environmental impacts not covered in a previous EIR, or

(3) New information of substantial importance to the project becomes available, and

(A) The information was not known and could not have been known at the time the EIR was certified as complete or the Negative Declaration was adopted, and

(B) The new information shows any of the following:

1. The project will have one or more significant effects not discussed previously in the EIR,

2. Significant effects previously examined will be substantially more severe than shown in the EIR,

3. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, or

4. Mitigation measures or alternatives which were not previously considered in the EIR would substantially lessen one or more significant effects on the environment.

(b) If the EIR or Negative Declaration has been completed but the project has not yet been approved, the Lead Agency shall prepare or cause to be prepared the subsequent EIR before approving the project.

(c) If the project was approved prior to the occurrence of the conditions described in Subsection (a), the subsequent EIR shall be prepared by the public agency which grants the next discretionary approval for the project. In this situation no other Responsible Agency shall grant an approval for the project until the subsequent EIR has been completed.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21166, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment of subsection (a) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15067.5. Supplement to an EIR.

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15067 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15085(d).

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15088 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21166, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15068. Use of a Single EIR.

The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same. Lead Agencies may elect to write EIRs in advance for entire programs or regulations, in order to be prepared for project applications to come. Whenever an agency chooses to utilize any of these alternatives, however, it must find that the environmental effects of the projects are similar enough to warrant the same treatment in an EIR and that the EIR will adequately cover the impacts of any single project. If these tests are not met, an agency should supplement the EIR it prepares for a program to apply it to an individual project.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15068.5. Use of a General Plan EIR With Subsequent Projects.

The EIR on a general plan may be used as the foundation document for EIRs subsequently prepared for specific projects within the geographic area covered by the general plan. The subsequent EIRs may reference and summarize material in the EIR on the general plan for the description of the general environmental setting and as much of the description of the environmental impacts as applies to the specific project. Detailed information in the EIR on the specific project may be limited to a description of the project, the specific environmental setting and those impacts which are not adequately described for the specific project in the EIR on the general plan. When a subsequent EIR refers to an EIR on the general plan for part of its description of the environment and the environmental impacts, copies of the EIR on the general plan shall be made available to the public in a number of locations in the community and to any clearinghouse which will assist in public review of the EIR. The purpose of this section is not to restrict analysis of environmental issues but is to avoid the necessity for repeating detail from a General Plan EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15068.6. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A project involving the construction of housing or neighborhood commercial facilities in an urbanized area may be approved after considering an EIR previously prepared for a specific plan or a local coastal program after the Lead Agency complies with the requirements in this section.

(b) The procedures for complying with this section are as follows:

(1) The Lead Agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The Lead Agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The Lead Agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan or local coastal program or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) or Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan has been the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a specific finding as to whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15067.

(4) The Lead Agency shall make one or more findings as required by Section 15088 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The Lead Agency shall file a Notice of Determination with the county clerk if the Lead Agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15069. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency must prepare a single EIR for the ultimate project. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069.5. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than 2 years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR should evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the Lead Agency for a project and requires the Lead Agency to prepare an EIR, a Responsible Agency which must grant an approval for the project before the Lead Agency has completed the EIR may prepare and consider a staged EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15069.6. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or Negative Declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these Guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the State.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a MEA may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and locations of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIR's and Negative Declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIR's and Negative Declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15069.7. Tiering.

(a) Agencies are encouraged to tier their EIRs to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

(b) Whenever a broad scope EIR has been prepared on a program, plan, or policy and an environmental document is prepared later on an action included within the program, plan, or policy (such as a site specific action) the subsequent environmental document need only summarize the issues discussed in the broad scope or program EIR, incorporate discussions from the broader EIR by reference, and concentrate on the specific action proposed. The subsequent document shall state where the earlier document is available.

(c) Tiering may also be appropriate for different stages of actions.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15069.8. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on an integrated series of actions that are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program, or

(4) As individual projects carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR or an individual action.

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.

(5) Allow reduction in paperwork.

(c) Use with Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a Negative Declaration.

(2) If the agency finds that pursuant to Section 15067, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use with Subsequent EIRs and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice with Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

HISTORY:

1. New section filed 5-10-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 6.5. Statutory Exemptions

15070. Ongoing Project.

(a) A project as defined in Section 15037(a)(1) of these Guidelines, approved prior to November 23, 1970, shall require an Environmental Impact Report or a Negative Declaration if the project may have a significant effect on the environment, and either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that this Section (1) shall not apply to projects which come under the jurisdiction of the National Environmental Policy Act (NEPA) and which, through regulations promulgated under NEPA, were held to be too far advanced at the time of NEPA's effective date to require an EIS in compliance with those regulations.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A project as defined in Section 15037(a)(3) or in Section 15037(a)(2) as it relates to contracts, where the permit or other entitlement was issued, or the contract approved, prior to April 5, 1973, shall not require an EIR or Negative Declaration, subject to the following provisions:

(1) CEQA expressly does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where the issuance or approval occurred prior to December 5, 1972, and prior to said date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a project involving the issuance of a lease, permit, license, certificate or other entitlement to use has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall require an EIR or Negative Declaration only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

(c) Any draft EIR which has been completed or sent out for public review on or before January 1, 1977, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in February 1975, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a) and (b).

(d) Any project approved before February 7, 1975, by a local agency formation commission without complying with CEQA is declared legally effective unless:

(1) The legality of the project was contested in a legal proceeding in which a violation of CEQA was alleged prior to February 7, 1975, and the case was pending and undecided by February 7, 1975, or

(P.R.C. 21176(a))

(2) The project was determined to be illegal, void, or ineffective because of noncompliance with CEQA in any judicial proceeding decided before July 6, 1975. (P.R.C. 21176(b))

(e) Any draft EIR or Negative Declaration which has been completed and sent out for public review before January 1, 1978, in compliance with procedures of a public agency consistent with CEQA and these Guidelines as amended in December 1976, shall be deemed to be in compliance with these Guidelines. No further EIR shall be required except as provided in Subsections (a), (b) or (c). in Section 15067.

HISTORY:

1. New subsection (e) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history, see Register 76, No. 41.

15071. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA, and no EIR is required.

(a) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Specific actions necessary to prevent or mitigate an emergency.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

2. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15072. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an environmental impact report but does require consideration of environmental factors as required by Section 21102 of CEQA.

15073. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA, and no environmental documents are required. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis. (P.R.C. 21080(b))

(b) In the absence of any discretionary provision contained in the relevant local ordinance, it shall be presumed that the following actions are ministerial:
(1) Issuance of building permits.
(2) Issuance of business licenses.
(3) Approval of final subdivision maps.
(4) Approval of individual utility service connections and disconnections.
(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.
(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

HISTORY:
1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).
NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15074. Notice of Exemption.

(a) When a public agency determines that a project is exempt from the requirements of CEQA and the public agency approves or determines to carry out the project, it may file a notice of exemption. Such a notice shall include:
(1) A brief description of the project,
(2) A finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and
(3) A brief statement of reasons to support the findings.
(b) Whenever a public agency approves an applicant's project, it or the applicant may file a notice of exemption. The notice of exemption filed by an applicant shall contain the information required in subdivision (a) above, together with a certified document issued by the public agency stating that it has found the project to be exempt. This may be a certified copy of an existing document or record of the public agency.
(c) When a state agency files this notice, the notice of exemption will be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. Copies of all such notices shall be posted on a weekly basis at the Resources Building Information Desk, 1416 Ninth Street, Sacramento, California. Each such list will remain posted for 30 days.
(d) When a local agency files this notice, the notice of exemption will be filed with the county clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

(e) The filing of a Notice of Exemption starts a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56 of Stats. 1974.

HISTORY:

1. New section filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment of subsections (c) and (d) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment of subsection (a) and new subsection (e) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15075. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves. [P.R.C. Section 21080(b) (5)]

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or Negative Declaration prepared for his project prior to the Lead Agency's disapproval of the project after normal evaluation and processing.

HISTORY:

1. Renumbering of former Section 15075 to Section 15151 and new Section 15075 filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history of former Section 15075 see Register 76, No. 41.

15076. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except ground water), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an Environmental Impact Report or Negative Declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, Negative Declaration, or other document prepared for the thermal power plant site or facility documents, shall include the environmental impact, of any, of the action described in this section.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b) (6), Public Resources Code.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15077. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games [P.R.C. Sec. 21080(b) (7)]. If such facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the Lead Agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15078. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an Environmental Impact Report or Negative Declaration on the adoption of timberland preserve zones under Government Code Sections 51100 *et seq.* (Gov. Code, Sec. 51119).

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15079. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an Environmental Impact Report or a Negative Declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 13389, Water Code.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment filed 5-10-80; effective thirtieth day thereafter (Register 80, No. 19).

15079.1. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment or materials,

(3) Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b) (8), Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15079.2. Proposition 13 Adjustments.

CEQA does not apply to actions taken prior to January 1, 1982, by a public agency to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution. This exemption is limited to projects directly undertaken by any public agency or projects undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies where the projects:

(a) Initiate or increase fees, rates, or charges charged for any existing public service, program, or activity, or

(b) Reduce or eliminate the availability of an existing public service program, or activity, or

(c) Close publicly owned or operated facilities, or

(d) Reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b) (9), Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15079.3. Adoption of Local Coastal Programs.

CEQA does not apply to activities and approvals by any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code). CEQA shall apply to the certification of a local coastal program by the California Coastal Commission pursuant to Chapter 6 of the California Coastal Act.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15079.4. Passenger or Commuter Service on Existing Rail Lines.

CEQA does not apply to projects for the institution or increase of passenger or commuter service on rail lines already in use, including the modernization of existing stations and parking facilities.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21085.5, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15079.5. State and Regional Transportation Improvement Programs.

CEQA does not apply to a project for the development of a regional transportation improvement program or the state transportation improvement program.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21085.6, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 7. Evaluating Projects

15080. Initial Study.

(a) If a project is subject to the requirements of CEQA and not exempted by these Guidelines, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment unless the Lead Agency can determine that the project will clearly have a significiant effect. If any aspects of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an EIR must be prepared. All phases of project planning, implementation, and operation must be considered in the Initial Study of the project. To meet the requirements of this section, the Lead Agency may use an Initial Study prepared pursuant to the National Environmental Policy Act.

(b) Purposes. The purposes of an Initial Study are to:

(1) Identify environmental impacts;

(2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;

(3) Focus an EIR, if one is required, on potentially significant environmental effects;

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs.

(c) Contents. An Initial Study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project is compatible with existing zoning and plans;

(6) The name of the person or persons who prepared or participated in the Initial Study.

(d) Uses.

(1) The Initial Study shall be used to provide a written determination of whether a Negative Declaration or an EIR shall be prepared for a project.

(2) Where a project is revised in response to an Initial Study so that potential adverse effects are mitigated to a point where no significant environmental effects would occur, a Negative Declaration shall be prepared instead of an EIR. If the project would still result in one or more significant effects on the environment after mitigation measures are added to the project, an EIR shall be prepared.

(3) The EIR shall emphasize study of the impacts determined to be significant and can omit further examination of those impacts found to be clearly insignificant in the Initial Study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the Lead Agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an Initial Study. These forms are only suggested, and public agencies are free to devise their own format for an Initial Study.

(g) Consultation. As soon as a Lead Agency has determined that a project is not exempt and that an initial study will be required to determine whether a Negative Declaration or an EIR is required, the Lead Agency shall consult with all Responsible Agencies and all Trustee Agencies responsible for resources affected by the project as required by Section 15063(b).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.3, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. New subsection (g) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
5. Amendment of subsections (c) (1) and (g) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15081. Determining Significant Effect.

(a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

(b) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider both primary or direct and secondary or indirect consequences. Primary consequences are immediately related to the project (the construction of a new treatment plant may facilitate population growth in a particular area), while secondary consequences are related more to primary consequences than to the project itself (an impact upon the resource base, including land, air, water and energy use of the area in question may result from the population growth).

(c) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

HISTORY:

1. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77. For prior history, see Register 75, No. 44.

15082. Mandatory Findings of Significance.

A project shall be found to have a significant effect on the environment if:

(a) The project has the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15083. Negative Declaration.

(a) General. A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Lead Agency finds on the basis of an Initial Study will not have a significant effect on the environment.

(b) Consultation. Before completing a Negative Declaration, the Lead Agency shall consult with all Responsible Agencies pursuant to Section 15066. This consultation may take place during the public review period required by Subsection (e) of this section.

(c) Contents. A Negative Declaration shall include:

(1) A brief description of the project; including a commonly used name for the project if any;

(2) The location of the project and the name of the project proponent;

(3) A finding that the project will not have a significant effect on the environment;

(4) An attached copy of the Initial Study documenting reasons to support the finding.

(5) Mitigation measures, if any, included in the project to avoid potentially significant effects.

(d) Notice.

(1) Notice of the preparation on a Negative Declaration shall be provided to the public within a reasonable period of time prior to final adoption by the public agency of the Negative Declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(B) Posting of notice by the public agency on and off site in the area where the project is to be located.

(C) Direct mailing to owners of property contiguous to the project.

(2) The alternatives for providing notice specified in subsection (1) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency 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 project.

(3) The noticed review period shall be long enough to provide members of the public with sufficient time to respond to the proposed finding before the Negative Declaration is approved. Special requirements for review of Negative Declarations are contained in Sections 15161.5, 15161.6, 15162 and 15164.

(e) Consideration. Prior to approving the project, the decision-making body of the Lead Agency shall consider the Negative Declaration together with any comments received during the public review process and approve or disapprove the Negative Declaration.

(f) Notice of Determination.

(1) After making a decision to carry out or approve a project for which a Negative Declaration has been prepared, the Lead Agency shall file a Notice of Determination.

(2) The Notice of Determination shall include:

(A) An identification of the project including its common name where possible and its location.

(B) A brief description of the project.

(C) The date on which the agency approved the project.

(D) The determination of the agency that the project will not have a significant effect on the environment.

(E) A statement that a Negative Declaration has been prepared pursuant to the provisions of CEQA.

(F) The address where a copy of the Negative Declaration may be examined.

(3) If the Lead Agency is a State agency, the Notice of Determination shall be filed with the Secretary for Resources.

(4) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires a discretionary approval from any State agency, the Notice of Determination also shall be filed with the Secretary for Resources.

(5) The filing of the Notice of Determination with the Secretary for Resources or the county clerk starts a 30-day statute of limitations on court challenges to the approval under CEQA. (P.R.C. 21167(b)).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21064, 21092, 21104, 21108(a), 21152(a), 21153, and 21167, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*, 13 Cal. 3d 68.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a) and (d) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1)
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment of subsections (b) and (f) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
5. Amendment of subsections (d)(3), (e) and (f)(2) filed 5-10-80; effective thirtieth day thereafter (Register 80, No. 19).

15084. Decision to Prepare an EIR.

(a) If the Lead Agency finds, after an initial study, that the project may have a significant effect on the environment, the Lead Agency must prepare or cause to be prepared an Environmental Impact Report.

(b) An EIR should be prepared whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant effect on the environment.

(c) An EIR should be prepared when there is serious public controversy concerning the environmental effects of a project. Controversy not related to an environmental issue does not require the preparation of an EIR.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15085. EIR Process.

The following steps shall be followed after the Lead Agency decides to prepare an EIR.

(a) General. When an agency decides that an EIR will be required for a project, it shall follow the procedures contained in this section.

(b) Early Consultation.

(1) After determining that an EIR will be required for a project, the Lead Agency shall send a Notice of Preparation to each Responsible Agency and Trustee Agency responsible for resources affected by the project and consult with those agencies as required by Section 15086.

(2) Prior to completing the draft EIR, the Lead Agency should also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process.

(3) For projects where federal involvement might require preparation of a federal EIS, the Lead Agency under CEQA shall consult with the appropriate federal agencies as provided in Section 15063.

(c) Notice of Completion. As soon as the draft EIR is completed, a notice of completion must be filed with the Secretary for the Resources Agency. The notice shall include a brief description of the project, its proposed location, and an address where copies of the EIR are available and the period during which comments will be received. A form for this notice is provided in the Appendices. The Notice of Completion will provide the basis for information published by the Secretary for Resources in an EIR Monitor. Where the EIR will be reviewed through the State review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the Notice of Completion, and no Notice of Completion need be sent to the Resources Agency.

(d) Public Review.

(1) After completing a draft EIR, the Lead Agency shall consult with and obtain comments from public agencies having jurisdiction by law with respect to the project and should consult with persons having special expertise with respect to any environmental impact involved. The Lead Agency shall provide the general public with an opportunity to comment on the EIR.

(2) The Lead Agency shall provide public notice of the completion of a draft EIR at the same time as it sends a Notice of Completion to the Resources Agency. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(B) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(C) Direct mailing to owners of property contiguous to the project.

(3) The alternatives for providing notice specified in subsection (2) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for such project.

(4) Public agencies shall use the State Clearinghouse to distribute EIRs and other environmental documents to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(5) To make copies of EIRs available to the public, Lead Agencies should furnish copies of draft EIRs to appropriate public library systems.

(6) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(7) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency.

(e) Evaluation by Lead Agency. The Lead Agency shall evaluate comments received from persons who reviewed the draft EIR.

(f) Preparation of Final EIR. The Lead Agency shall prepare a final EIR. The contents of a final EIR are specified in Section 15146 of these Guidelines.

(g) Certification of Final EIR. The final EIR shall be presented to the decision-making body of the Lead Agency. The Lead Agency shall certify that the final EIR has been completed in compliance with CEQA and the state guidelines and that the decision-making body or administrative official having final approval authority over the project has reviewed and considered the information contained in the EIR prior to the approval of the project.

(h) Notice of Determination.

(1) After approving a project for which an EIR has been prepared, the Lead Agency shall file a Notice of Determination. Such notice shall include:

(A) An identification of the project including its common name where possible and its location.

(B) A brief description of the project.

(C) The date when the agency approved the project.

(D) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(E) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(F) Whether mitigation measures were made a condition of the approval of the project.

(G) Whether a Statement of Overriding Considerations was adopted for the project.

(H) The address where a copy of the EIR and the record of project approval may be examined.

(2) If the Lead Agency is a state agency, the Notice of Determination shall be filed with the Secretary for Resources.

(3) If the Lead Agency is a local agency, the Notice of Determination shall be filed with the county clerk of the county or counties in which the project would be located. If the project requires discretionary approval from a state agency, the notice shall also be filed with the Secretary for Resources.

(4) The filing of the Notice of Determination starts a 30 day statute of limitations on court challenges to the approval under CEQA. (P.R.C. 21167(c))

(i) Filing of Final EIR. If the Lead Agency is a state agency, a copy of the final EIR shall be filed with the appropriate planning agency of any city, county, or city and county which will be affected by the project.

(j) Use of Final EIR by Responsible Agencies. Each responsible agency shall consider the Lead Agency's final EIR before acting upon or approving the project pursuant to Section 15064.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21108(a), 21152(a), and 21167, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsections (a), (b), (d), (g) and (h) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment of subsection (b) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
5. Amendment of subsection (h)(1) filed 5-10-80; effective thirtieth day thereafter (Register 80, No. 19).

15085.5. Process for a Responsible Agency.

(a) General. A Responsible Agency complies with CEQA by considering documents prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a Responsible Agency.

(b) Response to Consultation. A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a Responsible Agency shall explain its reasons for recommending whether the Lead Agency should prepare an EIR or Negative Declaration for a project. Where the Responsible Agency disagrees with the Lead Agency's proposal to prepare a Negative Declaration for a project, the Responsible Agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 45 days after receiving a Notice of Preparation from the Lead Agency, the Responsible Agency shall send a written reply by certified mail. The reply shall specify the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project. The Lead Agency shall include this information in the EIR.

(c) Meetings. The Responsible Agency shall designate employees or representatives to attend meetings requested by the Lead Agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A Responsible Agency should review and comment on draft EIRs and Negative Declarations for projects which the Responsible Agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a Negative Declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments may deal with any aspect of the project or its environmental effects. Comments should be as specific as possible.

(e) Decision on Adequacy of EIR or Negative Declaration. If a Responsible Agency believes that the final EIR or Negative Declaration prepared by the Lead Agency is not adequate for use by the Responsible Agency, the Responsible Agency must either:

(1) Take the issue to court within 30 days after the Lead Agency files a Notice of Determination,

(2) Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration, or

(3) Prepare a subsequent EIR if permissible under Section 15067.

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. A new or supplemental EIR can be prepared only as provided in Section 15067.

(g) Adoption of Alternatives or Mitigation Measures. When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measure within its powers that would substantially lessen any significant effect the project would have on the environment. When considering alternatives and mitigation measures, a Responsible Agency is more limited than a Lead Agency. In deciding whether to carry out, finance, or approve a project, a Responsible Agency has responsibility for mitigating or avoiding only the environmental effects of those activities which are within the scope of its statutory authorities.

(h) Findings. The Responsible Agency shall make the findings required by Section 15088 for each significant effect of the project and shall make the findings in Section 15089 if necessary.

(i) Notice of Determination. The Responsible Agency should file a Notice of Determination in the same manner as a Lead Agency under Section 15083(f) or 15085(h).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsection (d) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15086. EIR Combined with Existing Planning and Review Process.

The EIR process should be combined with the existing planning, review, and project approval process being used by each public agency. The Lead Agency shall include the EIR as a part of the regular project report which is used in the existing review and budgetary process.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15087. Additional Notices.

In their implementing procedures, public agencies may provide for the filing of notices in addition to the notices required or authorized by these Guidelines.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15088. Findings.

(a) No public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects of the project unless the public agency makes one or more of the following written findings for each of those significant effects, accompanied by a statement of the facts supporting each finding.

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant environmental effects thereof as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

(d) A public agency shall not approve or carry out a project as proposed unless the significant environmental effects have been reduced to an acceptable level.

(e) As used in this Section, the term "acceptable level" means that:

(1) All significant environmental effects that can feasibly be avoided have been eliminated or substantially lessened as determined through findings as described in Subsection (a), and

(2) Any remaining, unavoidable significant effects have been found acceptable under Section 15089.

NOTE: Authority cited: Section 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174 and 21081, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515 (1978).

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).
4. New subsections (d) and (e) filed 5-9-80; effective thirtieth day thereafter (Register 80, No. 19).

15089. Statement of Overriding Considerations.

(a) CEQA requires the decision maker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. Where agencies have taken action resulting in environmental damage without explaining the reasons which supported the decision, courts have invalidated the action.

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not mitigated, the agency must state in writing the reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15088(a)(2) or (a)(3).

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the Notice of Determination.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsection (b) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15090. Limitations on Local Responsible Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).
2. Repealer filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Article 8. Categorical Exemptions

15100. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are exempt under Section 15073 of these guidelines, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code and *Wildlife Alive* v. *Chickering*, 18 Cal. 3d 190.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. New subsection (c) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15100.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.4. Application by Public Agencies.

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIR's for projects described in the classes and examples in this article except under the provisions of Section 15100.2.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15101. Class 1: Existing Facilities.

Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities except where the activity will involve removal of a scenic resource including a stand of trees, a rock outcropping, or an historic building.

(d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;
(k) Division of existing multiple family rental units into condominiums;
(*l*) Demolition and removal of individual small structures listed in this subsection except where the structures are of historical, archaeological or architectural significance:
(1) Single family residences not in conjunction with the demolition of two or more units,
(2) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the demolition of two or more such structures,
(3) Stores, offices, and restaurants if designed for an occupant load of 20 persons or less, if not in conjunction with the demolition of two or more such structures,
(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.
(n) Conversion of a single family residence to office use.
(o) The conversion of existing commercial units in one structure from single to condominium type ownership.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. Amendment of subsections (b), (e), (f) and (*l*) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment of subsection (e) and new subsections (n) and (o) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15102. Class 2: Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:
(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;
(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose and capacity.
(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.
(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15103. Class 3: New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable within a two year period. Examples of this exemption include but are not limited to:

(a) Single-family residences not in conjunction with the building of two or more such units. In urbanized area, up to three single-family residences may be constructed under this exemption.

(b) Apartments, duplexes and similar structures, with not more than four dwelling units if not in conjunction with the building of two or more such structures. In urbanized areas, the exemption applies to single apartments, duplexes and similar small structures designed for not more than six dwelling units if not constructed in conjunction with the building of two or more such structures.

(c) Stores, motels, offices, restaurants and similar small commercial structures not involving the use of significant amounts of hazardous substances, if designed for an occupant load of 30 persons or less, if not constructed in conjunction with the building of two or more such structures. In urbanized areas, the exemption also applies to commercial buildings on sites zoned for such use, if designed for an occupant load of 30 persons or less, if not constructed in conjunction with the building of 4 or more such structures and if not involving the use of significant amounts of hazardous substances.

(d) Water main, sewage, electrical, gas and other utility extensions of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsection (c) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15104. Class 4: Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except where it is to be located in a waterway, in any wetland, in an officially designated (by Federal, State or local governmental action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.
(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.
(d) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production;
(e) Minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.
(f) Minor trenching and backfilling where the surface is restored.
(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.
(h) The creation of bicycle lanes on existing rights-of-way.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:
1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. New subsection (g) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. New subsection (h) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15105. Class 5: Minor Alterations in Land Use Limitations.

Class 5 consists of minor alterations in land use limitations in areas with less than a 20% slope, which do not result in any changes in land use or density, including but not limited to:
(a) Minor lot line adjustments, side yard and set back variances not resulting in the creation of any new parcel;
(b) Issuance of minor encroachment permits.
(c) Reversion to acreage in accordance with the Subdivision Map Act.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:
1. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15106. Class 6: Information Collection.

Class 6 consists of basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted or funded.

15107. Class 7: Actions by Regulatory Agencies for Protection of Natural Resources.

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

HISTORY:
1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15108. Class 8: Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15109. Class 9: Inspections.

Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products.

15110. Class 10: Loans.

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15111. Class 11: Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots.

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. New subsection (c) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15112. Class 12: Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report prepared pursuant to Government Code Section 65041 *et seq.* However, if the surplus property to be sold is located in those areas identified in Governor's Environmental Goals and Policy Report, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size or shape that it is incapable of independent development or use, or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in Article 8 of these guidelines, or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15113. Class 13: Acquisition of Lands for Wildlife Conservation Purposes.

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

HISTORY:

1. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15114. Class 14: Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or five classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15115. Class 15: Minor Land Divisions.

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have a slope greater than 20%.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19). For history of former section, see Registers 75, No. 44, and 75, No. 1.

15116. Class 16: Transfer of Ownership of Land in Order to Create Parks.

Class 16 consists of the acquisition or sale of land in order to establish a park where the land is in a natural condition or contains historic sites or archaeological sites and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological site. CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historic or archaeological site.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15117. Class 17: Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests or easements is not included.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15118. Class 18: Designation of Wilderness Areas.

Class 18 consists of the designation of wilderness areas under the California Wilderness System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15119. Class 19: Annexations of Existing Facilities and Lots For Exempt Facilities.

Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15103, New Construction of Small Structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter. (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15120. Class 20: Changes in Organization of Local Agencies.

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176 Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15121. Enforcement Actions by Regulatory Agencies.

(a) Class 21 consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted or prescribed by the regulatory agency or law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement.

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15122. Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include, but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15123. Normal Operations of Facilities for Public Gatherings.

Class 23 consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same kind of purpose. Facilities included within this exemption include, but are not limited to racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15124. Regulation of Working Conditions.

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

(a) Employee wages,

(b) Hours of work, or

(c) Working conditions where there will be no demonstrable physical changes outside the place of work.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15125. Class 25: Transfers of Ownership of Interests in Land to Preserve Open Space.

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space. Examples include but are not limited to:

(a) Acquisition of areas to preserve the existing natural conditions.

(b) Acquisition of areas to allow continued agricultural use of the areas.

(c) Acquisition to allow restoration of natural conditions.

(d) Acquisition to prevent encroachment of development into flood plains.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15126. Class 26: Acquisition of Housing for Housing Assistance Programs.

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15127. Class 27: Leasing New Facilities.

(a) Class 27 consists of the leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:

(1) Shall be in conformance with existing State plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared,

(2) Shall be substantially the same as that originally proposed at the time the building permit was issued,

(3) Shall not result in a traffic increase of greater than 10% of front access road capacity, and

(4) Shall include the provision of adequate employee and visitor parking facilities.

(b) Examples of Class 27 include but are not limited to:

(1) Leasing of administrative offices in newly constructed office space

(2) Leasing of client service offices in newly constructed retail space

(3) Leasing of administrative and/or client service offices in newly constructed industrial parks.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21085, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Article 9. Contents of Environmental Impact Reports

15140. General.

(a) Environmental Impact Reports shall contain the information outlined in this article. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) Each report shall contain a brief summary of the proposed action and its consequences in language sufficiently simple that the issues can be understood by the average member of the lay public. The EIR shall also contain a table of contents or an index. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives and how to mitigate the significant effects). The summary should normally not exceed 15 pages.

(c) The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document but shall be available for public examination and shall be submitted to all clearinghouses which assist in public review.

(d) The EIR should be prepared using a systematic, interdisciplinary approach. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation. Preparation of EIRs is dependent upon information from many sources, including the engineering project report and many scientific documents relating to environmental features. The EIR shall reference all documents used in its preparation including where possible, a citation to the page and section number of any technical reports which were used as the basis for any statements in the EIR.

(e) The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study shall be attached to the EIR to provide the basis for limiting the impacts discussed.

(f) An EIR shall contain a statement briefly indicating the reasons for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR.

(g) Drafting an EIR necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

(h) If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY:

1. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

2. Amendment of subsection (b) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15140.5. Page Limits.

The text of draft environmental impact reports shall normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15141. Description of Project.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals and supporting public service facilities.

HISTORY:

1. Amendment of subsection (c) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15142. Description of Environmental Setting.

An EIR must include a description of the environment in the vicinity of the project, as it exists before commencement of the project, from both a local and regional perspective.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region. Specific reference to related projects, both public and private, both existent and planned, in the region should also be included, for purposes of examining the possible cumulative impact of such projects.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State Implementation Plan once adopted), area-wide waste treatment and water quality plans, regional transportation plans, and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: *Bozung* v. *Local Agency Formation Commission*, 13 Cal. 3d 263.

HISTORY:

1. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15143. Environmental Impact.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) The Significant Environmental Effects of the Proposed Project. Describe the direct and indirect significant effects of the project on the environment, giving due consideration to both the short-term and long-term effects. It should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development) and other aspects of the resource base such as water, scenic quality and public services. Cumulative effects shall also be discussed when found to be significant.

(b) Any Significant Environmental Effects Which Cannot Be Avoided if the Proposal is Implemented. Describe any significant impacts, including those which can be reduced to an insignificant level but not eliminated. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described. Describe significant impacts on any aesthetically valuable surroundings, or on human health.

(c) Mitigation Measures Proposed to Minimize the Significant Effects. Describe significant, avoidable, adverse impacts, including inefficient and unnecessary consumption of energy, and measures to minimize these impacts. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts. This discussion shall identify the mitigation measures which will eliminate such impacts or reduce them to a level of insignificance. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(d) Alternatives to the Proposed Action. Describe all reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice. The specific alternative of "no project" must also always be evaluated, along with the impact. The discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives substantially impede the attainment of the project objectives, and are more costly. If the environmentally superior alternative is the "no project" alternative, then the EIR shall also identify an environmentally superior alternative among the other alternatives.

(e) The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity: Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented: Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as a highway improvement which provides access to a nonaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) The Growth-Inducing Impact of the Proposed Action: Discuss the ways in which the proposed project could foster economic or population growth, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21100, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515 (1978).

HISTORY:

1. Amendment filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).
2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).
3. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
4. Amendment of subsections (a), (c) and (d) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15143.1. Limitations on Discussion of Environmental Impact.

The information required by subsections (e) and (f) of Section 15143 need be included only in EIRs prepared in connection with any of the following activities.

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21176, Public Resources Code.

HISTORY:

1. New section filed 12-27-76 as an emergency; designated effective 1-1-77. Certificate of Compliance included (Register 77, No. 1).

15143.5. Effects Found Not to be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possibly significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an Initial Study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15144. Organizations and Persons Consulted.

The identity of all federal, state or local agencies, other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization must be given.

15145. Water Quality Aspects.

Describe in the environmental setting section, and other sections where applicable, water quality aspects of the proposed project which have been previously certified by the appropriate state or interstate organization as being in substantial compliance with applicable water quality standards.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15146. Contents of Final Environmental Impact Report.

(a) The Final EIR shall consist of:

(1) The Draft EIR or a revision of the draft.

(2) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(3) A list of persons, organizations and public agencies commenting on the Draft EIR.

(4) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(b) The response of the Lead Agency to comments received may take the form of a revision of the Draft EIR or may be an attachment to the Draft EIR. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major issues raised when the Lead Agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: *People* v. *County of Kern*, 39 Cal. App. 3d 830.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing (Register 73, No. 50)
2. Amendment of subsection (a) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsection (b) 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15147. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on projects such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Renumbering and amendment of subsection (c) to Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15148. EIR as Part of General Plan.

(a) The requirements for an EIR on a local general plan, element or amendment thereof will be satisfied by the general plan or element document, and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these Guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review.

HISTORY:

1. New Section 15148 filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

3. Amendment of subsection (b) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15149. Incorporation by Reference.

(a) An EIR may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the Lead Agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the Lead Agency does not have an office in the county.

(c) Where an EIR uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

2. New subsection (d) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15150. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15151. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

HISTORY:

1. Renumbering of Section 15075 to Section 15151 filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5). For prior history of former Section 15075, see Register 76, No. 41.

Article 10. Evaluation of Environmental Impact Reports

15160. Adequate Time for Review and Comment.

The lead agency should provide adequate time for other public agencies and members of the public to review and comment on an EIR that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and others described in Sections 15085 (b) and (d) of these Guidelines of the time for receipt of comments on EIR's.

(b) In setting time periods for review, public agencies shall give consideration to their obligation to obtain comments from public agencies having jurisdiction by law with respect to the project and to the policy favoring public participation.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days except in unusual situations. The review period for draft EIRs for which a state agency is the Lead Agency or a Responsible Agency shall be at least 45 days unless a shorter period is approved by the State Clearinghouse.

(d) A review period for an EIR does not require a halt in other planning activities related to a project. Planning should continue in conjunction with environmental evaluation.

HISTORY:

1. Amendment filed 12-14-73 as an emergency; effective upon filing Certificate of Compliance included. (Register 73, No. 50).
2. Amendment of subsections (a) and (c) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15160.5. Purpose of Review.

The legally required preparation, review and comment procedures for environmental documents provide the opportunity for citizens, all professional disciplines, and public agencies to evaluate critically the environmental document and the manner in which technical data are used.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). Note: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15161. Review of Environmental Impact Reports.

(a) Public agencies must develop procedures for reviewing EIR's which Lead Agencies submit to them for comments.

(b) Cities and counties should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(c) Reviewers should focus on the sufficiency of the EIR in discussing possible impacts upon the environment, ways in which adverse effects might be minimized, and alternatives to the project, in light of the intent of the Act to provide decision-makers with useful information about such factors. Public agencies reviewing projects should explain the basis for their comments, and whenever possible, should submit data or references in support of such comments.

(d) Upon completion of reviewing an EIR, it is suggested that reviewing agencies supply the Lead Agency with the name of a contact person who is available for later consultation should this prove necessary.

HISTORY:

1. Amendment of subsections (a) and (b) and new subsection (e) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of subsections (a), (b), and (d), and repealer of subsection (e) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment of subsection (c) filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

15161.5. Review by State Agencies.

(a) EIR's and Negative Declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIR's and Negative Declarations prepared by a state agency where such agency is a Lead Agency.

(2) Draft EIR's and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIS's and Negative Declarations prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1) and Parts I and II of Office of Management and Budget Circular A-95.

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved.

(d) When an EIR or Negative Declaration is submitted to the State Clearinghouse for review, the review period set by the Lead Agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for Negative Declarations. In exceptional circumstances, The State Clearinghouse may set shorter review periods when requested by the Lead Agency.

(e) The number of copies of an EIR or Negative Declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the Lead Agency is encouraged to contact the regional and district offices of state Responsible Agencies, the Lead Agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment of subsection (d) and new subsections (e) and (f) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15161.6. Projects of Statewide, Regional or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional or areawide significance. EIRs or Negative Declarations prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(b) The Lead Agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared.

(2) A project which would interfere with the attainment or maintenance of State or national air quality standards including:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial manufacturing or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project located in and substantially impacting on an area of critical environmental sensitivity for which an EIR was prepared including:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 67463 of the Government Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within ¼ mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for rare and endangered species as defined by Fish and Game Code Section 903.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste water management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY:

1. New section filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. New subsection (b) (7) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15162. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15163. Requests for Environmental Documents.

(a) The Lead Agency, after preparing an EIR or other environmental document described in these Guidelines, is responsible for making such documents available to the public for inspection. Members of the general public requesting copies of the EIR may be charged for the actual cost of reproducing that copy.

(b) The Lead Agency should file draft EIR's in appropriate public library systems in order to improve public access to the draft EIR.

HISTORY:

1. Amendment and new subsection (b) filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15164. Public Participation.

While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementing procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

15165. Public Hearings.

(a) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of the CEQA and these Guidelines to do so. The hearing may be held in conjunction with and as a part of normal planning activities. To as great a degree as possible, these hearings should include comments from reviewing agencies made pursuant to these Guidelines.

(b) A Draft EIR should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(c) Notice shall be given of all public hearings in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(d) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section, which procedures may be consistent with already existing hearing and notice requirements of the public agency for regularly conducted legislative, planning and other proceedings.

(e) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

HISTORY:

1. Amendment of subsections (a) and (b) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

15165.5. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to public agency procedures. Public notice shall be handled in accordance with individual agency requirements and Section 15165(c).

(b) Administrative appeals based solely upon the merits of the project and not upon the adequacy of the environmental document do not require a new hearing on the environmental document unless the agency holds a de-novo hearing on the project being appealed. The decision making body to which an appeal had been made must, however, consider the environmental document and make findings under Sections 15088 and 15089 if appropriate.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100 and 21151, Public Resources Code.

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15166. Retention and Availability of Comments.

Comments received through the consultation process shall be kept on file for a reasonable period and available for public inspection at an address given in the Final EIR. Comments which may be received independently of the review of the Draft EIR shall also be considered and kept on file.

15167. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41).

NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.

Article 11. EIR Monitor

15180. EIR Monitor.

The Secretary for Resources will provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the Guidelines, the completion of draft EIRs and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Article 12. Exemption for Certified State Regulatory Programs

15190. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, Negative Declarations, and Initial Studies if the Secretary finds that the program meets the criteria contained in that code section.

NOTE: Authority cited: Sections 21080.5, 21083, 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY:

1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4-2-76 (Register 76, No. 14).

15191. Notices.

Notices filed with the Secretary for Resources related to programs exempted by this article shall:

(a) Be available for public inspection.
(b) Be posted in a weekly list in the office of the Resources Agency.
(c) Remain posted for a period of 30 days.

15192. List of Exempt Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of private timber harvesting operations by the California Division of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coast commissions dealing with the consideration and granting of coastal development permits for activities of persons other than public agencies under the California Coastal Act of 1976, Division 20, (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment or repeal of standards, rules, regulations or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg-Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the State through the permit system administered by the county agricultural commissioners.

(j) The regulation of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080.5, Public Resources Code; Chapter 308, Statutes of 1978.

HISTORY:

1. New subsection (d) filed 8-18-78; effective thirtieth day thereafter (Register 78, No. 33). For prior history, see Register 77, No. 22.
2. New subsection (e) filed 5-2-79; effective thirtieth day thereafter (Register 79, No. 18).
3. New subsections (f) and (g) filed 6-4-79; effective thirtieth day thereafter (Register 79, No. 23).
4. New subsection (h) filed 7-24-79; effective thirtieth day thereafter (Register 79, No. 30).
5. New subsections (i) and (j) filed 4-11-80; effective thirtieth day thereafter (Register 80, No. 15).

Article 13. Litigation

15201. Statutory Reference.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code.

HISTORY:

1. New Article 13 (Sections 15201–15208) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

15202. Adequacy of an EIR or Negative Declaration For Use by Responsible Agencies.

A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to Section 15066 unless one of the following conditions occurs:

(a) A legal action or proceeding is filed challenging the EIR within the period provided in Section 21167(c), or

(b) A subsequent EIR is made necessary by Section 15067 of these Guidelines.

15203. Conditional Permits.

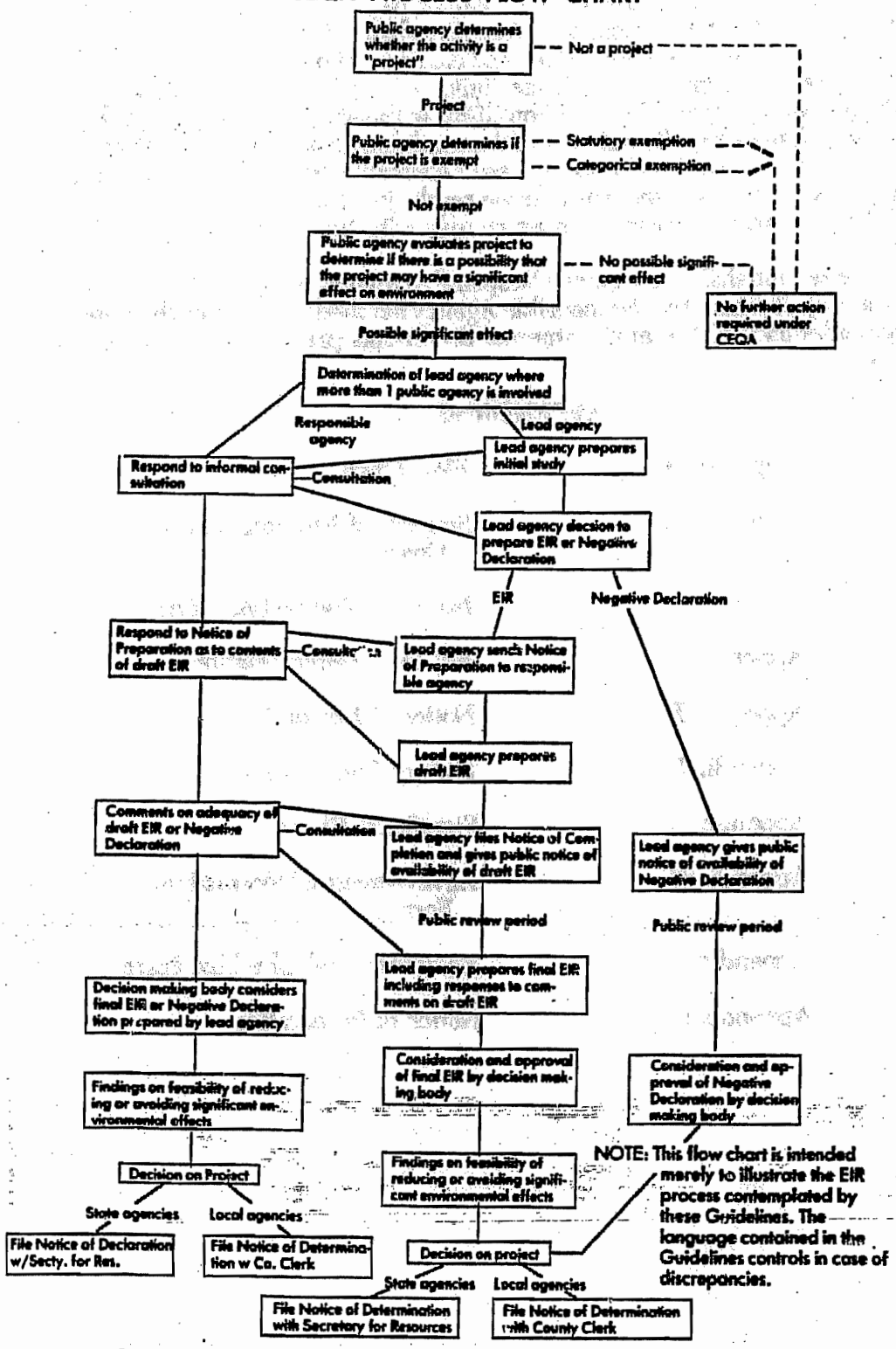
(a) If a lawsuit is filed challenging an EIR or Negative Declaration for noncompliance with CEQA, Responsible Agencies shall act as if the EIR or Negative Declaration complies with CEQA and continue to process the application for the project according to the time limits for Responsible Agency action contained in Government Code Section 65952. In this situation, the Responsible Agency shall have authority only to grant a conditional approval or disapproval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or Negative Declaration does comply with the provisions of CEQA. (P.R.C. Sec. 21167.3)

(b) This section shall not require a Responsible Agency to process an application for a project where that Responsible Agency has filed a lawsuit challenging the legal adequacy of the environmental documents prepared by or for the Lead Agency.

APPENDICES

Appendix A	Flow Chart
Appendix B	Subjects of Environmental Concern
Appendix C	Notice of Completion Form
Appendix D	Notice of Determination
Appendix E	Notice of Exemption
Appendix F	Energy Conservation
Appendix G	Significant Effects
Appendix H	Environmental Information Form
Appendix I	Environmental Checklist Form
Appendix J	Notice of Preparation

APPENDIX A
CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Amendment of Appendix A filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix A filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

APPENDIX B

AREAS OF SPECIAL EXPERTISE OF STATE DEPARTMENTS IN SUBJECTS OF ENVIRONMENTAL CONCERN

		BCDC	AIR RESOURCES BOARD	RESOURCES AGENCY	HEALTH SERVICES			SAVINGS AND LOAN	REAL ESTATE	CALTRANS	HCD	DMV	CORPORATIONS	CHP	AERONAUTICS		FOOD AND AGRICULTURE
1	Air quality and air pollution control		x		x							x		16	x		1
2	Chemical contamination and food products				x												x
3	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	26			7												
4	Congestion in urban areas, housing and building displacement		24		8				x		x						
5	Disease control				x												x
6	Electric energy generation and supply		x		x												
7	Environmental effects with special impact in low-income neighborhoods				9				x	x	x						
8	Flood plains and watersheds								x								x
9	Food additives and food sanitation				x												x
10	Herbicides			x	x												x
11	Historic and archaeological sites									x							
12	Human ecology		x		x												2
13	Microbiological contamination				x												x
14	Mineral land reclamation																
15	Natural gas energy development generation and supply																
16	Navigable airways		16		10										x		
17	Navigable waterways	25															
18	Noise control and abatement				x									x	x		
19	Parks, forests, trees and outdoor recreation areas	25															x
20	Pesticides			x	x												x
21	Radiation and radiological health			x	x												
22	Regional comprehensive planning		24		11			x	x	x	x				x		
23	Rodent control				x												x
24	Sanitation and waste systems				x												3
25	Shellfish sanitation				x												
26	Soil and plant life, sedimentation, erosion and hydrologic conditions																x
27	Toxic materials				x					x							x
28	Transportation and handling of hazardous materials				x							x		x			4
29	Water quality and water pollution control				x												x
30	Fish and wildlife				12												5
31	Activities with special impact on regional jurisdictions	25			13												
32	Water project formulation		24														
33	Geothermal energy		24														
34	Oil and petroleum development, generation and supply																
35	Statewide land use patterns																
36	Open Space policy		24														
37	Statewide overview—cumulative impact of separate projects									x							
38	Seismic Hazards										x						

		BOATING & WATERWAYS	COASTAL COMMISSION	CTRPA	COLORADO RIVER BOARD	CONSERVATION	ENERGY COMMISSION	FISH AND GAME	FORESTRY	PARKS AND RECREATION	SOLID WASTE MANAGEMENT BOARD	STATE LANDS DIVISION	STATE RECLAMATION BOARD	STATE WATER RESOURCES CONTROL BOARD	WATER RESOURCES	NATIVE AMERICAN HERITAGE COMMISSION	OFFICE OF PLANNING AND RESEARCH
1	Air quality and air pollution control			27		x								x			
2	Chemical contamination and food productions				14			x						x			
3	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	x	. 26	27	14	x		x		x		x		x	x		
4	Congestion in urban areas, housing and building displacement		26	27										21			
5	Disease control				14			x	22					x			
6	Electric energy generation and supply	x	26		14		x	x	23	x					x		
7	Environmental effects with special impact in low-income neighborhoods									19							
8	Flood plains and watersheds		26	27	14	x		x		x		x	20		x		
9	Food additives and food sanitation																
10	Herbicides				14			x	22	x				x			
11	Historic and archaeological sites		26	27						x		x				x	
12	Human ecology		26	27				x		x							
13	Microbiological contamination				14			x						x			
14	Mineral land reclamation		26	27		x		x		x		x					
15	Natural gas energy development generation and supply		26			x	x	15									
16	Navigable airways							16									
17	Navigable waterways	x	26	27	14			x					20				
18	Noise control and abatement							17									
19	Parks, forests, trees and outdoor recreation areas	x	26	27	14	x		x		x		x				x	
20	Pesticides							x	22	x				x	x		
21	Radiation and radiological health		26		14		x	x									
22	Regional comprehensive planning	x	26	27	14	x	x	x		x		x			x		x
23	Rodent control		26					18	22	x		x					
24	Sanitation and waste systems		26		14	x								x	x		
25	Shellfish sanitation							x						x	x		
26	Soil and plant life, sedimentation, erosion and hydrologic conditions		26	27	14	x		x				x		x	x		
27	Toxic materials				14			x			x			x	x		
28	Transportation and handling of hazardous materials					x	x							x	x		
29	Water quality and water pollution control	x	26	27	14		x	x						x	x		
30	Fish and wildlife		26	27	14			x			x			21	x		
31	Activities with special impact on regional jurisdictions		26	27	14						x		20		x		
32	Water project formulation	x			14			x	23		x		20	x	x		
33	Geothermal energy				14		x	x						21	x		
34	Oil and petroleum development, generation and supply		26				x	x						21			
35	Statewide land use patterns		26	27			x	x									
36	Open space policy		26	27			x	x								x	
37	Statewide overview—cumulative impact of separate projects						x										
38	Seismic Hazards		26	27			x								x		

APPENDIX B FOOTNOTES

No.

1. *Food and Agriculture*—Effects on plants and animals.
2. *Food and Agriculture*—Protection of food and fiber.
3. *Food and Agriculture*—Agricultural, dairy and feed lot systems.
4. *Food and Agriculture*—As pertains to transportation, handling, storage and decontamination of pesticides.
5. *Food and Agriculture*—Pesticide effects, predatory animal control, bird control.
6. *California Highway Patrol*—Enforcement of motor vehicle regulations.
7. *Health Services*—Beach sanitation, water pollution, solid waste and mosquito control.
8. *Health Services*—Pertains to health component.
9. *Health Services*—Most of these are strongly related to health.
10. *Health Services*—Pertains to noise.
11. *Health Services*—Pertains to personal and environmental health components.
12. Health Services—As it may pertain to human health hazards.
13. *Health Services*—Pertains to comprehensive health planning.
14. *Colorado River Board*—As pertains to the Colorado, New and Alamo Rivers.
15. *Fish and Game*—As field development and distribution systems may affect fish and wildlife.
16. *Fish and Game*—As may affect migrating and resident wildlife.
17. *Fish and Game*—As excessive noise may affect wildlife.
18. *Fish and Game*—As water quality may affect fish and wildlife.
19. *Parks and Recreation*—In impacted areas only.
20. *Reclamation Board*—In areas of Board's jurisdiction only—the Sacramento-San Joaquin Valley.
21. *State Water Resources Control Board*—As may pertain to water quality.
22. *Forestry*—With respect to forest land.
23. *Forestry*—(6) and (32)—As related to fire protection or State (fire protection) responsibility land.
24. *Air Resources Board*—(4), (22), (32), (33), and (36)—As may pertain to residential, commercial, industrial or transportation growth.
25. *San Francisco Bay Conservation and Development Commission*—(3), (17), (19), and (30)—With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. *California Coastal Commission*—(3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36)—With respect to effects within the California Coastal Zone.
27. *California Tahoe Regional Planning Agency*—With respect to effects in the Tahoe Basin.
28. *Native American Heritage Commission*—With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

HISTORY:

1. Amendment of Appendix B filed 12-15-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment of Appendix B and Footnotes filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix C

NOTICE OF COMPLETION

State of California
The Resources Agency

SECRETARY FOR RESOURCES

1416 Ninth Street, Room 1311
Sacramento, California 95814

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

HISTORY:

1. Amendment of Appendix C filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix D

NOTICE OF DETERMINATION

TO: ☐ Secretary for Resources
1416 9th Street, Room 1311
Sacramento, California 95814
or
☐ County Clerk
County of _____

FROM: (Public Agency) _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

State Clearinghouse Number (If submitted to State Clearinghouse)

Contact Person Telephone Number

Project Location

Project Description

This is to advise that the _____
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following determinations regarding the above described project:

1. The project ☐ will ☐ will not have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
   The EIR or Negative Declaration and record of project approval may be examined at: _____
3. Mitigation measures ☐ were, ☐ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations ☐ was, ☐ was not, adopted for this project.

Date Received for Filing _____

Signature

Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21174, Public Resources Code.

HISTORY:

1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix E

NOTICE OF EXEMPTION

TO: ☐ Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814

☐ County Clerk
County of _____

FROM:

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Name of Public Agency Approving Project

Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

Reasons why project is exempt:

Contact Person Area Code Telephone Extension

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? Yes__ No__

Date Received for Filing

Signature

Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

HISTORY:
1. New Appendix E filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Appendix F

ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,
(2) decreasing reliance on natural gas and oil, and
(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Initial and life-cycle energy costs or supplies.
5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.

3. The effects of the project on peak and base period demands for electricity and other forms of energy.

4. The degree to which the project complies with existing energy standards.

5. The effects of the project on energy resources.

6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.

3. The potential for reducing peak energy demand.

4. Alternate fuels (particularly renewable ones) or energy systems.

5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).

2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

3. Repealer and new Appendix F filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.

4. Amendment of Section II filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix G

SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(b) Have a substantial, demonstrable negative aesthetic effect;

(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;

(e) Breach published national, state, or local standards relating to solid waste or litter control;

(f) Substantially degrade water quality;

(g) Contaminate a public water supply;

(h) Substantially degrade or deplete ground water resources;

(i) Interfere substantially with ground water recharge;

(j) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study;

(k) Induce substantial growth or concentration of population;

(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;

(m) Displace a large number of people;

(n) Encourage activities which result in the use of large amounts of fuel, water, or energy;

(o) Use fuel, water, or energy in a wasteful manner;

(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;

(r) Expose people or structures to major geologic hazards;

(s) Extend a sewer trunk line with capacity to serve new development;

(t) Substantially diminish habitat for fish, wildlife or plants;

(u) Disrupt or divide the physical arrangement of an established community;

(v) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected;

(w) Conflict with established recreational, educational, religious or scientific uses of the area;

(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.

(y) Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land.

(z) Interfere with emergency response plans or emergency evacuation plans.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix G filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.

2. Amendment of subsections (n) and (o) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

3. Amendment of subsections (j) and (v) and new subsections (y) and (z) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix H

ENVIRONMENTAL INFORMATION FORM

(To be completed by applicant)

Date Filed _____

GENERAL INFORMATION

1. Name and address of developer or project sponsor: _____

2. Address of project: _____
Assessor's Block and Lot Number _____

3. Name, address, and telephone number of person to be contacted concerning this project: _____

4. Indicate number of the permit application for the project to which this form pertains: _____

5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

6. Existing zoning district: _____

7. Proposed use of site (Project for which this form is filed): _____

PROJECT DESCRIPTION

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off-street parking provided.
12. Attach plans.
13. Propose scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

YES NO

___ ___ 21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.

___ ___ 22. Change in scenic views or vistas from existing residential areas or public lands or roads.

___ ___ 23. Change in pattern, scale or character of general area of project.

___ ___ 24. Significant amounts of solid waste or litter.

___ ___ 25. Change in dust, ash, smoke, fumes or odors in vicinity.

___ ___ 26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.

___ ___ 27. Substantial change in existing noise or vibration levels in the vicinity.

___ ___ 28. Site on filled land or on slope of 10 percent or more.

___ ___ 29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.

___ ___ 30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).

___ ___ 31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).

___ ___ 32. Relationship to a larger project or series of projects.

ENVIRONMENTAL SETTING

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.

34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date _____ _____
(Signature)

For _____

(NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix H filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 40). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix I

ENVIRONMENTAL CHECKLIST FORM

(To be completed by Lead Agency)

I. BACKGROUND.

1. Name of Proponent _____
2. Address and Phone Number of Proponent:

_____

_____

_____

3. Date of Checklist Submitted _____
4. Agency Requiring Checklist _____
5. Name of Proposal, if applicable _____

_____

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required on attached sheets.)

	YES	MAYBE	NO
1. Earth. Will the proposal result in:			
a. Unstable earth conditions or in changes in geologic substructures?	___	___	___
b. Disruptions, displacements, compaction or overcovering of the soil?	___	___	___
c. Change in topography or ground surface relief features?	___	___	___
d. The destruction, covering or modification of any unique geologic or physical features?	___	___	___
e. Any increase in wind or water erosion of soils, either on or off the site?	___	___	___
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	___
g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?			
2. Air. Will the proposal result in:			
a. Substantial air emissions or deterioration of ambient air quality?	___	___	___
b. The creation of objectionable odors?	___	___	___
c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	___	___	___
3. Water. Will the proposal result in:			
a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?	___	___	___
b. Changes in absorption rates, drainage patterns or the rate and amount of surface water runoff?	___	___	___
c. Alterations to the course or flow of flood waters?	___	___	___
d. Change in the amount of surface water in any water body?	___	___	___

	YES	MAYBE	NO
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	—	—	—
f. Alteration of the direction or rate of flow of ground waters?	—	—	—
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	—	—	—
h. Substantial reduction in the amount of water otherwise available for public water supplies?	—	—	—
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	—	—	—
4. Plant Life. Will the proposal result in:			
a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, and aquatic plants)?	—	—	—
b. Reduction of the numbers of any unique, rare or endangered species of plants?	—	—	—
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	—	—	—
d. Reduction in acreage of any agricultural crop?	—	—	—
5. Animal Life. Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms or insects)?	—	—	—
b. Reduction of the numbers of any unique, rare or endangered species of animals?	—	—	—
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	—	—	—
d. Deterioration to existing fish or wildlife habitat?	—	—	—
6. Noise. Will the proposal result in:			
a. Increases in existing noise levels?	—	—	—
b. Exposure of people to severe noise levels?	—	—	—
7. Light and Glare. Will the proposal produce new light or glare?	—	—	—
8. Land Use. Will the proposal result in a substantial alteration of the present or planned land use of an area?	—	—	—
9. Natural Resources. Will the proposal result in:			
a. Increase in the rate of use of any natural resources?	—	—	—
b. Substantial depletion of any nonrenewable natural resource?	—	—	—
10. Risk of Upset. Will the proposal involve:			
a. A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	—	—	—
b. Possible interference with an emergency response plan or an emergency evacuation plan?	—	—	—

	YES	MAYBE	NO
11. Population. Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?	___	___	___
12. Housing. Will the proposal affect existing housing, or create a demand for additional housing?	___	___	___
13. Transportation/Circulation. Will the proposal result in:			
a. Generation of substantial additional vehicular movement?	___	___	___
b. Effects on existing parking facilities, or demand for new parking?	___	___	___
c. Substantial impact upon existing transportation systems?	___	___	___
d. Alterations to present patterns of circulation or movement of people and/or goods?	___	___	___
e. Alterations to waterborne, rail or air traffic?	___	___	___
f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			
14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
a. Fire protection?	___	___	___
b. Police protection?	___	___	___
c. Schools?	___	___	___
d. Parks or other recreational facilities?	___	___	___
e. Maintenance of public facilities, including roads?			
f. Other governmental services?	___	___	___
15. Energy. Will the proposal result in:			
a. Use of substantial amounts of fuel or energy?	___	___	___
b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?	___	___	___
16. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:			
a. Power or natural gas?	___	___	___
b. Communications systems?	___	___	___
c. Water?	___	___	___
d. Sewer or septic tanks?	___	___	___
e. Storm water drainage?	___	___	___
f. Solid waste and disposal?	___	___	___
17. Human Health. Will the proposal result in:			
a. Creation of any health hazard or potential health hazard (excluding mental health)?	___	___	___
b. Exposure of people to potential health hazards?	___	___	___
18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?	___	___	___

	YES	MAYBE	NO
19. Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?	___	___	___
20. Cultural Resources.			
a. Will the proposal result in the alteration of or the destruction of a prehistoric or historic archeological site?	___	___	___
b. Will the proposal result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?	___	___	___
c. Does the proposal have the potential to cause a physical change which would affect unique ethnic cultural values?	___	___	___
d. Will the proposal restrict existing religious or sacred uses within the potential impact area?	___	___	___
21. Mandatory Findings of Significance.			
a. Does the project have the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	___	___	___
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)	___	___	___
c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	___	___	___
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	___	___	___

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

IV. DETERMINATION
(To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION WILL BE PREPARED.

☐ I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Date _____ _____
(Signature)

For _____

(NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix I filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment of Section II filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix J

NOTICE OF PREPARATION

TO: _____ FROM: _____
(Responsible Agency) (Lead Agency)

_____ _____
(Address) (Address)

_____ _____

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the probable environmental effects are contained in the attached materials. A copy of the Initial Study ☐ is, ☐ is not, attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 45 days after receipt of this notice.

Please send your response to _____ at the address shown above. We will need the name for a contact person in your agency.

Project Title:

Project Applicant, if any:

Date _____ Signature _____
Title _____
Telephone _____

Reference: California Administrative Code, Title 14, Sections 15035.7, 15054.3, 15066.

HISTORY:

1. New Appendix J filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

§ 15002
§ 15004
§ 15020
§ 15021
§ 15022
§ 15025
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§ 15042
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§ 15206
§ 15208
§ 15223
§ 15225
§ 15367

Article 1. General

15000. Authority.

The regulations contained in this chapter are prescribed by the Secretary for Resources to be followed by all state and local agencies in California in the implementation of the California Environmental Quality Act. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

Secretary for Resources
Room 1311, 1416 Ninth Street
Sacramento, CA 95814

These Guidelines are binding on all public agencies in California.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code; *City of Santa Ana* v. *City of Garden Grove,* (1979) 100 Cal. App. 3d 521.

HISTORY:

1. New Chapter 3, Articles 1 through 10 (§§ 15000 through 15166, not consecutive) filed 2-7-73; designated effective upon filing as provided in Section 21083, Public Resources Code (Register 73, No. 6).
2. Amendment filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15001. Short Title.

These Guidelines may be cited as the "State CEQA Guidelines." Existing references to the "State EIR Guidelines" shall be construed to be references to the "State CEQA Guidelines."

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083 and 21087, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. Amendment filed 1-7-82; effective thirtieth day thereafter (Register 82, No. 2).
3. Amendment filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
4. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15002. General Concepts.

(a) Basic Purposes of CEQA. The basic purposes of CEQA are to:

(1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.

(2) Identify ways that environmental damage can be avoided or significantly reduced.

(3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.

(4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(b) Governmental Action. CEQA applies to governmental action. This action may involve:

(1) Activities directly undertaken by a governmental agency,

(2) Activities financed in whole or in part by a governmental agency, or
(3) Private activities which require approval from a governmental agency.
(c) Private Action. Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.
(d) Project. A "project" is an activity subject to CEQA. The term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. See Section 15378.
(e) Time for Compliance. A governmental agency is required to comply with CEQA procedures when the agency proposes to carry out or approve the activity. See Section 15004.
(f) Environmental Impact Reports and Negative Declarations. An environmental impact report (EIR) is the public document used by the governmental agency to analyze the significant environmental effects of a proposed project, to identify alternatives, and to disclose possible ways to reduce or avoid the possible environmental damage.
(1) An EIR is prepared when the public agency finds substantial evidence that the project may have a significant effect on the environment. See Section 15064(a)(1).
(2) When the agency finds that there is no substantial evidence that a project may have a significant environmental effect, the agency will prepare a "Negative Declaration" instead of an EIR. See Section 15070.
(g) Significant Effect on the Environment. A significant effect on the environment is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. See Section 15382. Further, when an EIR identifies a significant effect, the government agency approving the project must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not. See Section 15091.
(h) Methods for Protecting the Environment. CEQA requires more than merely preparing environmental documents. The EIR by itself does not control the way in which a project can be built or carried out. Rather, when an EIR shows that a project could cause substantial adverse changes in the environment, the governmental agency must respond to the information by one or more of the following methods:
(1) Changing a proposed project;
(2) Imposing conditions on the approval of the project;
(3) Adopting plans or ordinances to control a broader class of projects to avoid the adverse changes;
(4) Choosing an alternative way of meeting the same need;
(5) Disapproving the project;
(6) Finding that changes in, or alterations, the project are not feasible.
(7) Finding that the unavoidable, significant environmental damage is acceptable as provided in Section 15093.
(i) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project". See Section 15357.
(1) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial", and CEQA does not apply. See Section 15369.

(2) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another. See Section 15268.

(j) Public Involvement. Under CEQA, an agency must solicit and respond to comments from the public and from other agencies concerned with the project. See Sections 15073, 15086, 15087 and 15088.

(k) Three Step Process. An agency will normally take up to three separate steps in deciding which document to prepare for a project subject to CEQA.

(1) In the first step the lead agency examines the project to determine whether the project is subject to CEQA at all. If the project is exempt, the process does not need to proceed any farther. The agency may prepare a notice of exemption. See Sections 15061 and 15062.

(2) If the project is not exempt, the lead agency takes the second step and conducts an initial study (Section 15063) to determine whether the project may have a significant effect on the environment. If the initial study shows that there is no substantial evidence that the project may have a significant effect, the lead agency prepares a negative declaration. See Sections 15070 et seq.

(3) If the initial study shows that the project may have a significant effect, the lead agency takes the third step and prepares an EIR. See Sections 15080 et seq.

(l) Certified Equivalent Programs. A number of environmental regulatory programs have been certified by the Secretary of the Resources Agency as involving essentially the same consideration of environmental issues as is provided by use of EIRs and negative declarations. Certified programs are exempt from preparing EIRs and negative declarations but use other documents instead. Certified programs are discussed in Article 17 and are listed in Section 15251.

(m) This section is intended to present the general concepts of CEQA in a simplified and introductory manner. If there are any conflicts between the short statement of a concept in this section and the provisions of other sections of these guidelines, the other sections shall prevail.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000-21176, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*, 13 Cal. 3d 68 (1974); *Running Fence Corp.* v. *Superior Court*, 15 Cal. App. 3d 400 (1975).

HISTORY:

1. New section filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).
2. Amendment filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15003. Policies.

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc.* v. *City of Los Angeles,* 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works* v. *Bosio,* 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People* v. *County of Kern,* 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth* v. *Board of Supervisors,* 8 Cal. 3d 247.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15004. Time of Preparation.

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21105, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors,* 8 Cal. 3d 247; *Mount Sutro Defense Committee* v. *Regents of the University of California,* 77 Cal. App. 3d 20.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15005. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provide by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 75, No. 1.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15006. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of lead agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15063)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(l) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15151)

(n) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic environmental impact reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing environmental impact reports in plain language. (15140)

(r) Following a clear format for environmental impact reports. (15120)

(s) Emphasizing the portions of the environmental impact report that are useful to decision-makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on environmental impact reports as specific as possible. (15205)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21083, Public Resources Code.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 80, No. 19.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15007. Amendments.

(a) These guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content requirements in guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the guidelines beginning with the earlier of the following two dates:

(1) The effective date of the agency's procedures amended to conform to the new guideline amendments; or

(2) The 120th day after the effective date of the guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the guidelines beginning with the effective date of the guideline amendments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21087, Public Resources Code; *Stevens* v. *City of Glendale,* 125 Cal. App. 3d 986.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

Article 2. General Responsibilities

15020. General.

Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the lead agency to accomplish. For example, a lead agency is responsible for the adequacy of its environmental documents. The lead agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21082.1, Public Resources Code; *Russian Hill Improvement Association* v. *Board of Permit Appeals*, 44 Cal. App. 3d 158 (1975).

HISTORY:

1. Repealer of Article 2 (Sections 15005 and 15006) and new Article 2 (Sections 15020–15025) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives.

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

15022. Public Agency Implementing Procedures.

(a) Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these guidelines.

(2) Conducting initial studies.

(3) Preparing negative declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

(8) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(9) Reviewing and considering environmental documents by the person or decisionmaking body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA.

(b) Any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district.

(c) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(d) In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21100.2 and 21151.5, Public Resources Code.

15023. Office of Planning and Research (OPR).

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources. People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 45 days after receiving a notice of preparation.

(f) OPR shall resolve disputes as to which agency is the lead agency for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.4, 21083, 21086 and 21087, Public Resources Code.

15024. Secretary for Resources.

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices of completion, determination, and exemption, as well as other notices required by certified state environmental regulatory programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.5, 21083, 21084, 21086, 21087, 21088 and 21152, Public Resources Code.

15025. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.

(3) Preparing a negative declaration or EIR.

(4) Determining that a negative declaration has been completed within a period of 105 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) The decisionmaking body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082, Public Resources Code; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

15040. Authority Provided by CEQA.

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 19...; *Golden Gate Bridge, Etc., Dist.* v. *Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F.* v. *Mathews*, 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors* v. *City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY:

1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15041. Authority to Mitigate.

Within the limitations described in Section 15040, (a) A lead agency for a project has authority to require changes in any or all activities involved in the project in order to lessen or avoid significant effects on the environment.

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi,* 83 Cal. App. 3d 707.

15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County,* 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill,* 121 Cal. App. 3d 203.

15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco,* (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill,* (1981) 121 Cal. App. 3d 203.

15044. Authority to Comment.

Any public agency or other person or entity may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

15045. Fees.

(a) All lead agencies preparing EIRs and negative declarations for projects to be carried out by any person or entity other than the lead agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or negative declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code; and Sections 6250 et seq., Government Code.

Article 4. Lead Agency

15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY:

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 78, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes may be found in Title 14, California Administrative Code, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15052 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Administrative Code, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

15060. Preliminary Review.

(a) A public agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project.

(c) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

HISTORY:

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15061. Review for Exemption.

(a) As part of the preliminary review, a public agency shall determine whether a particular activity is exempt from CEQA.

(b) Possible exemptions from CEQA include:

(1) The activity is not a project as defined in Section 15378.

(2) The project has been granted an exemption by statute (see Article 18, commencing with Section 15260) or by categorical exemption (see Article 19, commencing with Section 15300).

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with the Resources Agency or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68.

15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or the Secretary for Resources until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption shall be filed with the Secretary for Resources. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of the Secretary for Resources, Room 1311, 1416 Ninth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption will be filed with the county clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

(3) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant shall be filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice shall be filed with the Secretary for Resources. If the permit was granted by a local agency, the notice shall be filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant shall be subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an initial study or a similar analysis prepared pursuant to the National Environmental Policy Act.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall either:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand.

(2) The lead agency shall prepare a negative declaration if the agency perceives no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant, and

(C) Explaining the reasons for determining that potentially significant effects would not be significant.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an initial study. These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

15064. Determining Significant Effect.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) When a lead agency determines that there is substantial evidence that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected. If the lead agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency shall regard the effect as adverse. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider both primary or direct and secondary or indirect consequences.

(1) Primary consequences are immediately related to the project such as the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) Secondary consequences are related more to effects of the primary consequences than to the project itself and may be several steps removed from the project in a chain of cause and effect. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(e) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

(f) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as the basis for determining that the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(g) The decision as to whether a project may have one or more significant effects shall be based on information in the record of the lead agency.

(1) If the lead agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (Friends of B Street v. City of Hayward (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68).

(2) If the lead agency finds there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (Friends of B Street v. City of Hayward (1980) 106 Cal. App. 3d 988).

(h) In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors:

(1) If there is serious public controversy over the environmental effects of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR. Controversy unrelated to an environmental issue does not require preparation of an EIR.

(2) If there is a disagreement between experts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR.

(i) If an air emission or water discharge meets the existing standard for a particular pollutant, the lead agency may presume that the emission or discharge of the pollutant will not be a significant effect on the environment. If other information is presented suggesting that the emission or discharge may cause a significant effect, the lead agency shall evaluate the effect and decide whether it may be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles.*

15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

Article 6. Negative Declaration Process

15070. Decision to Prepare a Negative Declaration.

A proposed negative declaration shall be prepared for a project subject to CEQA when either:

(a) The initial study shows that there is no substantial evidence that the project may have a significant effect on the environment, or

(b) The initial study identified potentially significant effects but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence before the agency that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp.* v. *Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY:

1. Repealer of Article 6 (Sections 15060–15069.5) and new Article 6 (Sections 15070–15075) filed 7-13-83; designated effective 8-1-83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

15072. Public Notice.

(a) Notice that the lead agency proposes to adopt a negative declaration shall be provided to the public within a reasonable period of time prior to adoption by the lead agency of the negative declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to owners of property contiguous to the project as such owners are shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092, Public Resources Code; Section 6061, Government Code.

15073. Public Review of a Negative Declaration.

(a) The lead agency shall provide a public review period for a proposed negative declaration. The noticed public review period shall be long enough to provide members of the public with sufficient time to respond to the proposed finding before the negative declaration is approved.

(b) A copy of the notice with the proposed negative declaration shall be sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(c) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, the lead agency shall send copies of the negative declaration to the State Clearinghouse for distribution to the state agencies.

(d) When a negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall be not less than 30 days unless a shorter period is approved by the State Clearinghouse.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(e), 21003(b) and 21080(c), Public Resources Code; *Plaggmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

15074. Consideration and Approval of Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration before making its recommendation.

(b) Prior to approving the project, the decisionmaking body of the lead agency shall consider the proposed negative declaration together with any comments received during the public review process. The decisionmaking body shall approve the negative declaration if it finds on the basis of the initial study and any comments received that there is no substantial evidence that the project will have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

15075. Notice of Determination.

(a) After deciding to carry out or approve a project for which a negative declaration has been approved, the lead agency shall file a notice of determination.

(b) The notice of determination shall include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration may be examined.

(c) If the lead agency is a state agency, the notice of determination shall be filed with the Secretary for Resources.

(d) If the lead agency is a local agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires a discretionary approval from any state agency, the notice of determination also shall be filed with the Secretary for Resources.

(e) The filing of the notice of determination and the posting on a list of such notices starts a 30-day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

Article 6.5. Statutory Exemptions

HISTORY:

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

Article 7. EIR Process

15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY:

1. Repealer of Article 7 (Sections 15060–15069) and new Article 7 (Sections 15080–15096) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15' or 7½' topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 45 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 45 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with the Secretary for Resources.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) The notice of completion will provide the basis for information published by the Secretary for Resources in an EIR Monitor. Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion, and no notice of completion need be sent to the Resources Agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Other state, federal, and local agencies which exercise authority over resources which may be affected by the project.

(b) The lead agency may consult directly with any person who has special expertise with respect to any environmental impact involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Resources Agency. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to owners of property contiguous to the parcel or parcels on which the project is located as those owners are shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days from the date of the notice except in unusual situations. The review period for draft EIRs for which a state agency is the lead agency or a responsible agency shall be at least 45 days unless a shorter period is approved by the State Clearinghouse.

(d) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(e) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(f) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(g) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21092, 21104 and 21153, Public Resources Code; and Section 6061, Government Code.

15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary* v. *County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

15090. Certification of Final EIR.

The lead agency shall certify that:

(a) The final EIR has been completed in compliance with CEQA; and

(b) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21106 and 21152, Public Resources Code; *City of Carmel-by-the-Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been completed which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21081, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus*, 118 Cal. App. 3d 348.

15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

15093. Statement of Overriding Considerations.

(a) CEQA requires the decisionmaker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091 (a) (2) or (a) (3).

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: *San Francisco Ecology Center* v. *City and County of San Francisco,* 48 Cal. App. 3d 584 (1975); *City of Carmel-by-the-Sea* v. *Board of Supervisors* 71 Cal. App. 3d 84 (1977).

15094. Notice of Determination.

(a) The lead agency shall file a notice of determination following each project approval for which an EIR was considered. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with the Secretary for Resources.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with the Secretary for Resources.

(d) The filing of the notice of determination and the posting on a list of such notice starts a 30-day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council,* (1982) 129 Cal. App. 3d 436.

15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo* v. *Yorty,* (1973) 32 Cal. App. 3d 795.

15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 45 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments may deal with any aspect of the project or its environmental effects. Comments should be as specific as possible.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

Article 8. Time Limits

15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

15102. Initial Study.

The lead agency shall determine within 45 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 45 days after receipt of the notice. If a responsible agency fails to reply within the 45 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and may ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15105. Public Review.

(a) The public review period for a draft EIR should not be less than 30 days nor longer than 90 days except in unusual circumstances.

(b) The public review period for a negative declaration shall be a reasonable period of time sufficient to allow members of the public to respond to the proposed finding before the negative declaration is approved.

(c) If a draft EIR or negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092, Public Resources Code; *People* v. *County of Kern*, 39 Cal. App. 3d 830.

15106. Review by State Agencies.

When a draft EIR or negative declaration is submitted to the State Clearinghouse for review, the normal review period is 45 days for draft EIRs and 30 days for negative declarations. The State Clearinghouse may set shorter review periods when requested by the lead agency due to exceptional circumstances.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

15107. Completion of Negative Declaration.

With a private project, the negative declaration must be completed and ready for approval within 105 days from the date when the lead agency accepted the application as complete. The negative declaration may be approved at a later time when the permit or other entitlement is approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

15110. Projects With Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR-EIS or combined negative declaration-finding of no significant impact as provided in Section 15222, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91-190 as amended, 42 U.S.C.A. 4321–4347.

15111. Projects With Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action within 50 days on a tentative subdivision map for which an EIR is being or will be prepared pursuant to Article 2 (commencing with Section 66452) of Chapter 3, Division 2, Title 2 of the Government Code, but a negative declaration for a subdivision map must be completed within the 50 day period (see Government Code Section 66452.1(c)),

(2) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(3) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(4) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the application shall be made within one year from the date on which an application requesting approval of such project has been received and accepted as complete for CEQA processing by such agency. This one-year time limit may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.*, 59 Cal. App. 3d 959 (1976).

15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100 and 21105, Public Resources Code.

HISTORY:

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of the approvals for which the EIR will be used.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles*, 71 Cal. App. 3d 185 (1977).

15125. Environmental Setting.

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State Implementation Plan once adopted), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350.

15126. Environmental Impact.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(A) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Any Significant Environmental Effects Which Cannot be Avoided if the Proposal is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Mitigation Measures Proposed to Minimize the Significant Effects. Describe measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified if one has been selected. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens* v. *City of Glendale,* 125 Cal. App. 3d 986).

(d) Alternatives to the Proposed Action. Describe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.

(1) If there is a specific proposed project or a preferred alternative, explain why the other alternatives were rejected in favor of the proposal if they were considered in developing the proposal.

(2) The specific alternative of "no project" shall also be evaluated along with the impact. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) The discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(4) If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed. (*County of Inyo* v. *City of Los Angeles,* 124 Cal. App. 3d 1).

(5) The range of alternatives required in an EIR is governed by "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The key issue is whether the selection and discussion of alternatives fosters informed decisionmaking and informed public participation. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee* v. *Board of Trustees* (1979) 89 Cal. App. 3d 274).

(e) The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity. Describe the cumulative and long-term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) The Growth-Inducing Impact of the Proposed Action. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code. Formerly Section 15143.

15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126(e) concerning short-term uses versus long-term productivity, and (f) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code; 42 U.S.C. 4321–4347.

15128. Effects Not Found to be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

15130. Cumulative Impacts.

(a) Cumulative impacts shall be discussed when they are significant.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness. The following elements are necessary to an adequate discussion of cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or areawide conditions. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083(b), Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397.

15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY:

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

15152. Tiering.

(a) Agencies are encouraged to tier EIRs which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the EIR on the actual issues ripe for decision at each level of environmental review.

(b) Where an EIR has been prepared for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR on the project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(c) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project would be located.

(d) The initial study shall be used to decide whether and to what extent the prior EIR is still sufficient for the present project.

(e) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR should state that the lead agency is using the tiering concept and that the EIR is being tiered with the earlier EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

15153. Use of an EIR From an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, th[1397]sionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

Article 11. Types of EIRs

15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY:

1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160–15170) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

15162. Subsequent EIR.

(a) Where an EIR or negative declaration has been prepared, no additional EIR need be prepared unless:

(1) Subsequent changes are proposed in the project which will require important revisions of the previous EIR or negative declaration due to the involvement of new significant environmental impacts not considered in a previous EIR or negative declaration on the project;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken, such as a substantial deterioration in the air quality where the project will be located, which will require important revisions in the previous EIR or negative declaration due to the involvement of new significant environmental impacts not covered in a previous EIR or negative declaration; or

(3) New information of substantial importance to the project becomes available, and

(A) The information was not known and could not have been known at the time the previous EIR was certified as complete or the negative declaration was adopted, and

(B) The new information shows any of the following:

1. The project will have one or more significant effects not discussed previously in the EIR;

2. Significant effects previously examined will be substantially more severe than shown in the EIR;

3. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project; or

4. Mitigation measures or alternatives which were not previously considered in the EIR would substantially lessen one or more significant effects on the environment.

(b) If the EIR or negative declaration has been completed but the project has not yet been approved, the lead agency shall prepare or cause to be prepared the subsequent EIR before approving the project.

(c) If the project was approved prior to the occurrence of the conditions described in Subsection (a), the subsequent EIR shall be prepared by the public agency which grants the next discretionary approval for the project. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been completed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

15164. Addendum to an EIR.

(a) The lead agency or a responsible agency shall prepare an addendum to an EIR if:

(1) None of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred;

(2) Only minor technical changes or additions are necessary to make the EIR under consideration adequate under CEQA; and

(3) The changes to the EIR made by the addendum do not raise important new issues about the significant effects on the environment.

(b) An addendum need not be circulated for public review but can be included in or attached to the final EIR.

(c) The decisionmaking body shall consider the addendum with the final EIR prior to making a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

15166. EIR as Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

15167. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo v. Yorty*, 32 Cal. App. 3d 795 (1973).

15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

15170. Joint EIR-EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 12. Special Situations

15180. Redevelopment Projects.

(a) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY:

1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4-2-76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7-13-83; effective 8-1-83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a further, specific finding as to:

1. Whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

15183. Residential Projects Consistent With a Community Plan or Zoning.

(a) In approving a residential project meeting the requirements of this section, a public agency shall limit its examination of environmental effects under CEQA to effects which:

(1) Are peculiar to the project or the parcel on which the project would be located, although the effect may occur on or off the site of the project, and

(2) Were not analyzed as significant effects in a prior EIR on the zoning or community plan with which the residential project is consistent.

(b) The application of this section shall be limited to residential projects which are consistent with a community plan adopted as part of a general plan or a zoning action which:

(1) Zoned or designated the parcel on which the project would be located to accommodate a particular density of residential development, and

(2) Was the subject of an EIR certified by the lead agency for the planning or zoning action.

(c) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(d) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects. The finding shall be based on substantial evidence which need not include an EIR. Examples of uniformly applied development policies or standards include:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(e) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(f) Where a community plan meets the requirements of this section, any rezoning action consistent with the community plan shall be treated as a residential project subject to this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

Article 13. Review and Evaluation of EIRs and Negative Declarations

15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY:

1. New Article 13 (Sections 15201–15203) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

15204. Focus of Review.

(a) In reviewing draft EIRs, people should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects.

(b) In reviewing negative declarations, people should focus on the proposed finding that the project will not have a significant effect on the environment. If people believe that the project would have a significant effect, they should:

(1) Identify the effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and whenever possible, should submit data or references in support of the comments.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary.

(e) This section shall not be used to restrict the ability of reviewers to comment on broader issues and on the general adequacy of a document or to reject comments not focused as recommended by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code. Formerly Section 15161.

15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EISs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) The number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083, 21104 and 21153, Public Resources Code. Formerly Section 15161.5.

15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance. A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 74663 of the Government Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within ¼ mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wet lands, bays, estuaries, marshes, and habitats for rare and endangered species as defined by Fish and Game Code Section 903.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference. Section 21083, Public Resources Code.

15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

HISTORY:

1. New Article 14 (Sections 15220–15228) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR-EIS or negative declaration-finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

15223. Consultation With Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

15225. Circulation of Documents.

Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21092, Public Resources Code.

15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,
(b) Joint environmental research and studies,
(c) Joint public hearings,
(d) Joint environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21101, Public Resources Code.

15228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

Article 15. Litigation

15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY:

1. New Article 15 (Sections 15230–15233) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15231. Adequacy of EIR or Negative Declaration for Use by Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for noncompliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

Secretary for Resources
Attention: California EIR Monitor
1416 Ninth Street, Room 1311
Sacramento, California 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY:

1. New Article 16 (Section 15240) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

Article 17. Exemption for Certified State Regulatory Programs

15250. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY:

1. New Article 17 (Sections 15250–15253) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg-Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Food and Agriculture and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The regulations of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

(k) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren-Alquist Act, commencing with Public Resources Code Section 25500.

(*l*) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

15252. Substitute Document.

The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(a) A description of the proposed activity, and

(b) Either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in Subsection (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in Subsection (b). Where a certified agency does not meet the criteria in Subsection (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

Article 18. Statutory Exemptions

15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY:

1. New Article 18 (Sections 15260–15277) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on-going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 13389, Water Code.

15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 51119, Government Code.

15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long-range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long-range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal programs and long-range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.
(2) Issuance of business licenses.
(3) Approval of final subdivision maps.
(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Specific actions necessary to prevent or mitigate an emergency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4) and 21172, Public Resources Code.

15270. Projects Which are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or
(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:
(1) Meeting operating expenses, including employee wage rates and fringe benefits,
(2) Purchasing or leasing supplies, equipment, or materials,
(3) Meeting financial reserve needs and requirements,
(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or
(5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

15274. Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken prior to January 1, 1982, by a public agency.

(1) To implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution (Proposition 13), or

(2) To respond to a reduction in federal funds.

(b) This exemption is limited to projects directly undertaken by any public agency and to projects which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies where the projects:

(1) Initiate or increase fees, rates, or charges charged for any existing public service, program, or activity, or

(2) Reduce or eliminate the availability of an existing public service program, or activity, or

(3) Close publicly owned or operated facilities, or

(4) Reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(9), Public Resources Code.

15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

15276. State and Regional Transportation Improvement Programs.

CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(14), Public Resources Code.

15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

Article 19. Categorical Exemptions

15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY:

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal. 3d 190.

15300.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15300.4. Application by Public Agencies.

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIRs for projects described in the classes and examples in this article except under the provisions of Section 15300.2.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities except where the activity will involve removal of a scenic resource including a stand of trees, a rock outcropping, or an historic building;

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family rental units into condominiums;

(*l*) Demolition and removal of individual small structures listed in this subsection except where the structures are of historical, archaeological, or architectural significance:

(1) Single-family residences not in conjunction with the building of two or more such units. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) Apartments, duplexes, and similar structures, with no more than four dwelling units if not in conjunction with the demolition of two or more such structures. In urbanized areas, this exemption applies to single apartments, duplexes, and similar structures designed for not more than six dwelling units if not demolished in conjunction with the demolition of two or more such structures.

(3) Stores, motels, offices, restaurants, and similar small commercial structures if designed for an occupant load of 30 persons or less, if not constructed in conjunction with the demolition of two or more such structures. In urbanized areas, the exemption also applies to commercial buildings on sites zoned for such use, if designed for an occupant load of 30 persons or less if not demolished in conjunction with the demolition of four or more such structures.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) The conversion of existing commercial units in one structure from single to condominium type ownership.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15302. Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15303. New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel or to be associated with a project within a two-year period. Examples of this exemption include but are not limited to:

(a) Single-family residences not in conjunction with the building of two or more such units. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.

(b) Apartments, duplexes, and similar structures, with no more than four dwelling units if not in conjunction with the building or conversion of two or more such structures. In urbanized areas, exemption applies to single apartments, duplexes, and similar structures designed for not more than six dwelling units if not constructed in conjunction with the building or conversion of two or more such structures.

(c) Stores, motels, offices, restaurants, and similar small commercial structures not involving the use of significant amounts of hazardous substances, if designed for an occupant load of 30 persons or less, if not constructed in conjunction with the building of two or more such structures. In urbanized areas, the exemption also applies to commercial buildings on sites zoned for such use, if designed for an occupant load of 30 persons or less if not constructed in conjuction with the building of four or more such structures and if not involving the use of significant amounts of hazardous substances.

(d) Water main, sewage, electrical, gas, and other utility extensions of reasonable length to serve such construction.

(e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15304. Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard.

(b) New gardening or landscaping.

(c) Filling of earth into previously excavated land with material compatible with the natural features of the site.

(d) Minor alterations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

(f) Minor trenching and backfilling where the surface is restored.

(g) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.

(h) The creation of bicycle lanes on existing rights-of-way.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15305. Minor Alterations in Land Use Limitations.

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including but not limited to:

(a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel;

(b) Issuance of minor encroachment permits;

(c) Reversion to acreage in accordance with the Subdivision Map Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15306. Information Collection.

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15307. Actions by Regulatory Agencies for Protection of Natural Resources.

Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15308. Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code; International Longshoremen's and Warehousemen's Union v. Board of Supervisors, (1981) 116 Cal. App. 3d 265.

15309. Inspections.

Class 9 consists of activities limited entirely to inspections, to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15310. Loans.

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15311. Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots;

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15312. Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15207(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines; or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15313. Acquisition of Lands for Wildlife Conservation Purposes.

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15314. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15315. Minor Land Divisions.

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15316. Tranfer of Ownership of Land in Order to Create Parks.

Class 16 consists of the acquisition or sale of land in order to establish a park where the land is in a natural condition or contains historic sites or archaelogical sites and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historical or archaeological site. CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historic or archaeological site.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15317. Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15318. Designation of Wilderness Areas.

Class 18 consists of the designation wilderness areas under the California Wilderness System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15319. Annexations of Existing Facilities and Lots for Exempt Facilities.

Class 19 consists of only the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

(b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15320. Changes in Organization of Local Agencies.

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district.

(b) Consolidation of two or more districts having identical powers.

(c) Merger with a city of a district lying entirely within the boundaries of the city.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15321. Enforcement Actions by Regulatory Agencies.

Class 21 consists of:

(a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:

(1) The direct referral of a violation of lease, permit, license, certificate, or entitlement for use or of a general rule, standard, or objective to the Attorney General, District Attorney, or City Attorney as appropriate, for judicial enforcement.

(2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

(b) Law enforcement activities by peace officers acting under any law that provides a criminal sanction.

(c) Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15322. Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.
(b) Changes in the grade structure in a school which do not result in changes in student transportation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15323. Normal Operations of Facilities for Public Gatherings.

Class 23 consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. Facilities included within this exemption include, but are not limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools, and amusement parks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15324. Regulations of Working Conditions.

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

(a) Employee wages,
(b) Hours of work, or
(c) Working conditions where there will be no demonstrable physical changes outside the place of work.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15325. Transfers of Ownership of Interest in Land to Preserve Open Space.

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space. Examples include but are not limited to:

(a) Acquisition of areas to preserve the existing natural conditions.
(b) Acquisition of areas to allow continued agricultural use of the areas.
(c) Acquisition to allow restoration of natural conditions.
(d) Acquisition to prevent encroachment of development into flood plains.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15326. Acquisition of Housing for Housing Assistance Programs.

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15327. Leasing New Facilities.

(a) Class 27 consists of the leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:

(1) Shall be in conformance with existing state plans and policies and with general, community, and specific plans for which an EIR or negative declaration has been prepared,

(2) Shall be substantially the same as that originally proposed at the time the building permit was issued,

(3) Shall not result in a traffic increase of greater than 10% of front access road capacity, and

(4) Shall include the provision of adequate employee and visitor parking facilities.

(b) Examples of Class 27 include, but are not limited to:

(1) Leasing of administrative offices in newly constructed office space.

(2) Leasing of client service offices in newly constructed retail space.

(3) Leasing of administrative and/or client service offices in newly constructed industrial parks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15328. Small Hydroelectric Projects at Existing Facilities.

Class 28 consists of the installation of hydroelectric generating facilities in connection with existing dams, canals, and pipelines where:

(a) The capacity of the generating facilities is 5 megawatts or less,

(b) Operation of the generating facilities will not change the flow regime in the affected stream, canal, or pipeline including but not limited to:

(1) Rate and volume of flow,

(2) Temperature,

(3) Amounts of dissolved oxygen to a degree that could adversely affect aquatic life, and

(4) Timing of release.

(c) New power lines to connect the generating facilities to existing power lines will not exceed one mile in length if located on a new right of way and will not be located adjacent to a wild or scenic river.

(d) Repair or reconstruction of the diversion structure will not raise the normal maximum surface elevation of the impoundment.

(e) There will be no significant upstream or downstream passage of fish affected by the project.

(f) The discharge from the power house will not be located more than 300 feet from the toe of the diversion structure.

(g) The project will not cause violations of applicable state or federal water quality standards.

(h) The project will not entail any construction on or alteration of a site included in or eligible for inclusion in the National Register of Historic Places, and

(i) Construction will not occur in the vicinity of any rare or endangered species.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

15329. Cogeneration Projects at Existing Facilities.

Class 29 consists of the installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting the conditions described in this section.

(a) At existing industrial facilities, the installation of cogeneration facilities will be exempt where it will:

(1) Result in no net increases in air emissions from the industrial facility, or will produce emissions lower than the amount that would require review under the new source review rules applicable in the county, and

(2) Comply with all applicable state, federal, and local air quality laws.

(b) At commercial and industrial facilities, the installation of cogeneration facilities will be exempt if the installation will:

(1) Meet all the criteria described in Subsection (a),

(2) Result in no noticeable increase in noise to nearby residential structures,

(3) Be contiguous to other commercial or institutional structures.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

Article 20. Definitions

15350. General.

The definitions contained in this article apply to terms used throughout the guidelines unless a term is otherwise defined in a particular section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY:

1. New Article 20 (Sections 15350–15387) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15351. Applicant.

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15352. Approval.

(a) "Approval" means the decision by a public agency which 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. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21065, Public Resources Code.

15353. CEQA.

"CEQA" means the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21050, Public Resources Code.

15354. Categorical Exemption.

"Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(10) and 21084, Public Resources Code.

15355. Cumulative Impacts.

"Cumulative impacts" refer 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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083(b), Public Resources Code; Whitman v. Board of Supervisors, 88 Cal. App. 3d 397.

15356. Decision-Making Body.

"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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003(b), Public Resources Code; Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770.

15357. Discretionary Project

"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. A timber harvesting plan submitted to the State Forester for approval under the requirments of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(a), Public Resources Code; Johnson v. State of California (1968) 69 Cal. 2d 782; People v. Department of Housing and Community Development (1975) 45 Cal. App. 3d 185; Day v. City of Glendale (1975) 51 Cal. App. 3d 817; N.R.D.C. v. Arcata National Corp. (1976) 59 Cal. App. 3d 959.

15358. Effects.

"Effects" and "impacts" as used in these guidelines are synonymous.

(a) Effects include:

(1) Direct or primary effects which are caused by the project and occur at the same time and place.

(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068 and 21100, Public Resources Code.

15359. Emergency.

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(2), (3) and (4), Public Resources Code.

15360. Environment.

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21060.5, Public Resources Code.

15361. Environmental Documents.

"Environmental documents" means initial studies, negative declarations, draft and final EIRs, documents prepared as substitutes for EIRs and negative declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an initial study, negative declaration, or an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21080(b), 21080.5, 21108 and 21152, Public Resources Code.

15362. EIR—Environmental Impact Report.

"EIR" or "environmental impact report" means a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents of an EIR are discussed in Article 9, commencing with Section 15120 of these guidelines. The term "EIR" may mean either a draft or a final EIR depending on the context.

(a) Draft EIR means an EIR containing the information specified in Sections 15122 through 15131.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the lead agency to the comments received. The final EIR is discussed in detail in Section 15132.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

15363. EIS—Environmental Impact Statement.

"EIS" or "Environmental Impact Statement" means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). NEPA uses the term EIS in the place of the term EIR which is used in CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; 43 U.S.C.A. 4322(2) (c).

15364. Feasible.

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5 and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982.

15365. Initial Study.

"Initial study" means a preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the initial study is discussed in Article 5, commencing with Section 15060.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21080.2, 21080.3 and 21100, Public Resources Code.

15366. Jurisdiction by Law.

(a) "Jurisdiction by law" means the authority of any public agency:

(1) To grant a permit or other entitlement for use,

(2) To provide funding for the project in question, or

(3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

(1) The site of the project;

(2) The area in which the major environmental effects will occur; and/or

(3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15381, or the lead agency, see Section 15367.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104 and 21153, Public Resources Code.

15367. Lead Agency.

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 15051.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

15368. Local Agency.

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21062 and 21151, Public Resources Code.

15369. Ministerial.

"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. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Johnson* v. *State of California*, 69 Cal. 2d 782; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

15370. Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21100(c), Public Resources Code.

15371. Negative Declaration.

"Negative declaration" means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

15372. Notice of Completion.

"Notice of completion" means a brief notice filed with the Secretary for Resources by a lead agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

15373. Notice of Determination.

"Notice of determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(a) and 21152, Public Resources Code.

15374. Notice of Exemption.

"Notice of exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(b) and 21152(b), Public Resources Code.

15375. Notice of Preparation.

"Notice of preparation" means a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15376. Person.

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, city, county, city and county, town, the state, and any of the agencies or political subdivisions of such entities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15377. Private Project.

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or
(b) A lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15378. Project.

(a) "Project" means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law;

(2) Proposals for legislation to be enacted by the State Legislature;

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above);

(4) The submittal of proposals to a vote of the people of the state or of a particular community. (Stein v. City of Santa Monica, 110 Cal. App. 3d 458);

(5) The closing of a public school and the transfer of students to another school where the only physical changes involved are categorically exempt. (Prentiss v. Board of Education, 111 Cal. App. 3d 847; But see, Fullerton Joint Union High School District v. State Board of Education (Dec. 2, 1982) Cal. 3d, Slip Opinion Footnote 16 at page 27.)

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under Subsection (a) (1) or as a development proposal which will be subject to several governmental approvals under Subsections (a) (2) or (a) (3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15379. Public Agency.

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21063, Public Resources Code.

15380. Rare or Endangered Species.

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be rare or endangered as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Administrative Code; or

(2) Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subsection (c) shall nevertheless be considered to be rare or endangered if the species can be shown to meet the criteria in subsection (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21001(c), Public Resources Code; and Sections 1900–1913 and 2050–2055, Fish and Game Code.

15381. Responsible Agency.

"Responsible agency" means a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2 and 21167.3, Public Resources Code.

15382. Significant Effect on the Environment.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068, 21083, 21100 and 21151, Public Resources Code; *Hecton* v. *People of the State of California,* 58 Cal. App. 3d 653.

15383. State Agency.

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

15384. Substantial Evidence.

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.

(b) This definition is intended to be informative and does not constitute a change in, but is merely reflective of, existing law.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21168 and 21168.5, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Running Fence Corp.* v. *Superior Court* (1975) 51 Cal. App. 3d 400; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

15385. Tiering.

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR.

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

15386. Trustee Agency.

"Trustee agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include:

(a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3 and 21080.4, Public Resources Code.

15387. Urbanized Area.

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A lead agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301-3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.7, 21083 and 21084, Public Resources Code.

APPENDICES

Appendix A	Flow Chart
Appendix B	Subjects of Environmental Concern
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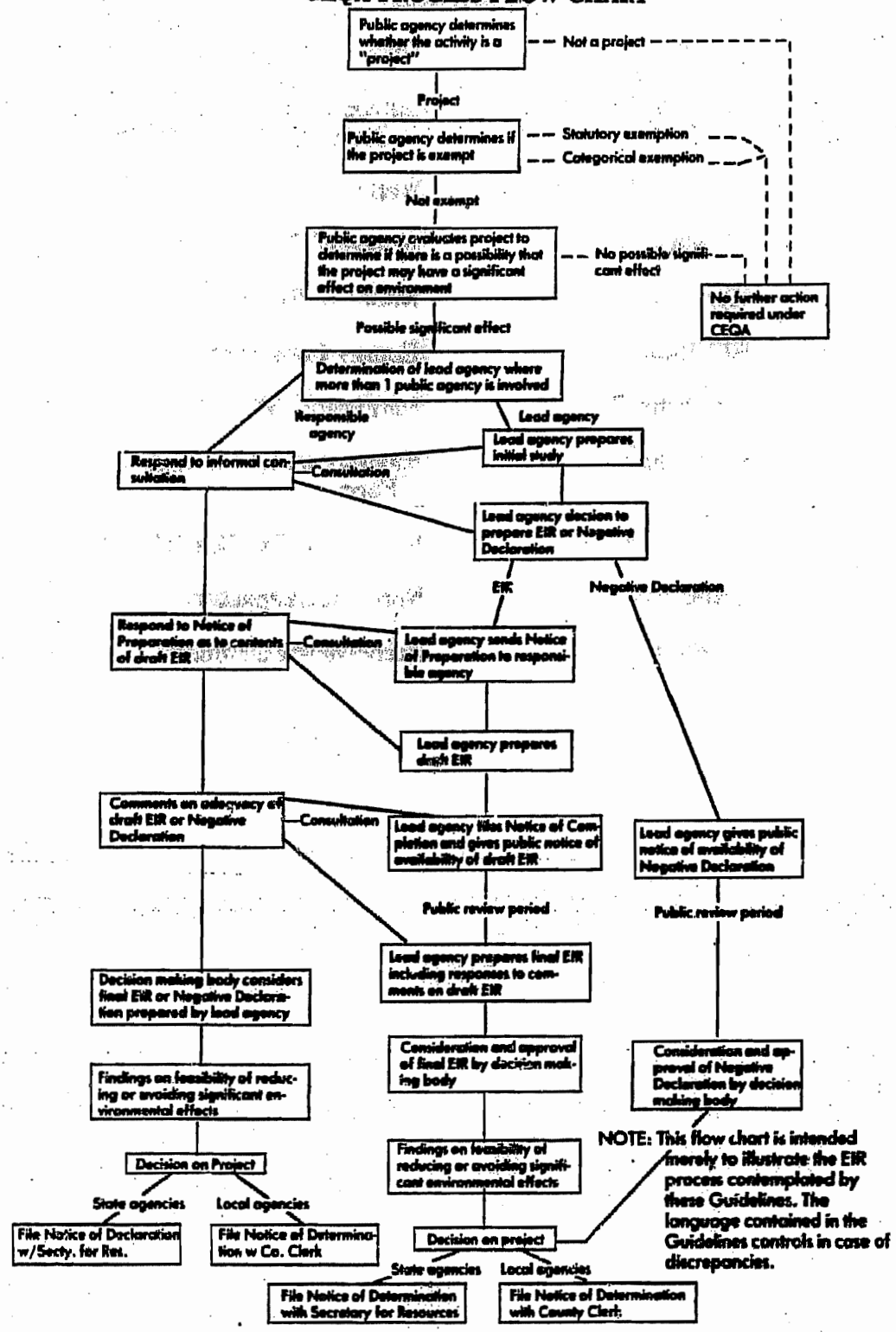
Appendix I	Environmental Checklist Form
Appendix J	Notice of Preparation
Appendix K	Archaeological Impacts

APPENDIX A
CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Amendment of Appendix A filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix A filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

APPENDIX B

AREAS OF SPECIAL EXPERTISE OF STATE DEPARTMENTS IN SUBJECTS OF ENVIRONMENTAL CONCERN

	BCDC	AIR RESOURCES BOARD	RESOURCES AGENCY	HEALTH SERVICES			SAVINGS AND LOAN	REAL ESTATE	CALTRANS	HCD	DMV	CORPORATIONS	CHP	AERONAUTICS		FOOD AND AGRICULTURE		
1		x		x							x		16	x		1	1	Air quality and air pollution control
2				x												x	2	Chemical contamination and food products
3	26			7													3	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches
4		24		8				x		x							4	Congestion in urban areas, housing and building displacement
5				x												x	5	Disease control
6		x		x													6	Electric energy generation and supply
7				9				x	x	x							7	Environmental effects with special impact in low-income neighborhoods
8								x								x	8	Flood plains and watersheds
9				x												x	9	Food additives and food sanitation
10			x	x												x	10	Herbicides
11									x								11	Historic and archaeological sites
12		x		x												2	12	Human ecology
13				x												x	13	Microbiological contamination
14																	14	Mineral land reclamation
15																	15	Natural gas energy development generation and supply
16		16		10										x			16	Navigable airways
17	25																17	Navigable waterways
18				x									x	x			18	Noise control and abatement
19	25															x	19	Parks, forests, trees and outdoor recreation areas
20			x	x												x	20	Pesticides
21			x	x													21	Radiation and radiological health
22		24		11			x	x	x	x				x			22	Regional comprehensive planning
23				x												x	23	Rodent control
24				x												3	24	Sanitation and waste systems
25				x													25	Shellfish sanitation
26																x	26	Soil and plant life, sedimentation, erosion and hydrologic conditions
27				x					x							x	27	Toxic materials
28				x							x		x			4	28	Transportation and handling of hazardous materials
29				x												x	29	Water quality and water pollution control
30				12												5	30	Fish and wildlife
31	25			13													31	Activities with special impact on regional jurisdictions
32		24															32	Water project formulation
33		24															33	Geothermal energy
34																	34	Oil and petroleum development, generation and supply
35																	35	Statewide land use patterns
36		24															36	Open Space policy
37									x								37	Statewide overview—cumulative impact of separate projects
38										x							38	Seismic Hazards

		BOATING & WATERWAYS	COASTAL COMMISSION	CTRPA	COLORADO RIVER BOARD	CONSERVATION	ENERGY COMMISSION	FISH AND GAME	FORESTRY	PARKS AND RECREATION	SOLID WASTE MANAGEMENT BOARD	STATE LANDS DIVISION	STATE RECLAMATION BOARD	STATE WATER RESOURCES CONTROL BOARD	WATER RESOURCES	NATIVE AMERICAN HERITAGE COMMISSION	OFFICE OF PLANNING AND RESEARCH
1	Air quality and air pollution control			27		x								x			
2	Chemical contamination and food productions				14			x						x			
3	Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches	x	26	27	14	x		x		x		x		x	x		
4	Congestion in urban areas, housing and building displacement		26	27										21			
5	Disease control				14			x	22					x			
6	Electric energy generation and supply	x	26		14		x	x	23	x					x		
7	Environmental effects with special impact in low-income neighborhoods									19							
8	Flood plains and watersheds		26	27	14	x		x		x		x	20		x		
9	Food additives and food sanitation																
10	Herbicides				14			x	22	x				x			
11	Historic and archaeological sites		26	27						x		x				x	
12	Human ecology		26	27				x		x							x
13	Microbiological contamination				14			x		x				x			
14	Mineral land reclamation		26	27		x		x		x		x					
15	Natural gas energy development generation and supply		26			x	x	15				x					
16	Navigable airways							16									
17	Navigable waterways	x	26	27	14			x					20				
18	Noise control and abatement							17									
19	Parks, forests, trees and outdoor recreation areas	x	26	27	14	x		x		x		x				x	
20	Pesticides							x	22	x				x	x		
21	Radiation and radiological health				14		x	x									
22	Regional comprehensive planning	x	26	27	14	x	x	x		x		x		x	x		x
23	Rodent control							x	22	x							
24	Sanitation and waste systems		26		14	x		18				x		x	x		
25	Shellfish sanitation							x						x	x		
26	Soil and plant life, sedimentation, erosion and hydrologic conditions		26	27	14	x		x		x					x		
27	Toxic materials				14			x				x		x	x		
28	Transportation and handling of hazardous materials					x	x							x	x		
29	Water quality and water pollution control	x	26	27	14	x	x	x						x	x		
30	Fish and wildlife		26	27	14			x						21			
31	Activities with special impact on regional jurisdictions		26	27	14								20		x		
32	Water project formulation	x			14			x	23				20		x		
33	Geothermal energy				14		x	x				x		21	x		
34	Oil and petroleum development, generation and supply		26			x	x	x				x		21			
35	Statewide land use patterns		26	27		x	x	x				x					
36	Open Space policy		26	27		x		x				x				x	
37	Statewide overview—cumulative impact of separate projects						x										x
38	Seismic Hazards		26	27		x	x								x		

APPENDIX B FOOTNOTES

No.

1. *Food and Agriculture*—Effects on plants and animals.
2. *Food and Agriculture*—Protection of food and fiber.
3. *Food and Agriculture*—Agricultural, dairy and feed lot systems.
4. *Food and Agriculture*—As pertains to transportation, handling, storage and decontamination of pesticides.
5. *Food and Agriculture*—Pesticide effects, predatory animal control, bird control.
6. *California Highway Patrol*—Enforcement of motor vehicle regulations.
7. *Health Services*—Beach sanitation, water pollution, solid waste and mosquito control.
8. *Health Services*—Pertains to health component.
9. *Health Services*—Most of these are strongly related to health.
10. *Health Services*—Pertains to noise.
11. *Health Services*—Pertains to personal and environmental health components.
12. Health Services—As it may pertain to human health hazards.
13. *Health Services*—Pertains to comprehensive health planning.
14. *Colorado River Board*—As pertains to the Colorado, New and Alamo Rivers.
15. *Fish and Game*—As field development and distribution systems may affect fish and wildlife.
16. *Fish and Game*—As may affect migrating and resident wildlife.
17. *Fish and Game*—As excessive noise may affect wildlife.
18. *Fish and Game*—As water quality may affect fish and wildlife.
19. *Parks and Recreation*—In impacted areas only.
20. *Reclamation Board*—In areas of Board's jurisdiction only—the Sacramento-San Joaquin Valley.
21. *State Water Resources Control Board*—As may pertain to water quality.
22. *Forestry*—With respect to forest land.
23. *Forestry*—(6) and (32)—As related to fire protection or State (fire protection) responsibility land.
24. *Air Resources Board*—(4), (22), (32), (33), and (36)—As may pertain to residential, commercial, industrial or transportation growth.
25. *San Francisco Bay Conservation and Development Commission*—(3), (17), (19), and (30)—With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. *California Coastal Commission*—(3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36)—With respect to effects within the California Coastal Zone.
27. *California Tahoe Regional Planning Agency*—With respect to effects in the Tahoe Basin.
28. *Native American Heritage Commission*—With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

HISTORY:

1. Amendment of Appendix B filed 12-15-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment of Appendix B and Footnotes filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix C

NOTICE OF COMPLETION

State of California
The Resources Agency
SECRETARY FOR RESOURCES
1416 Ninth Street, Room 1311
Sacramento, California 95814

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

HISTORY:
1. Amendment of Appendix C filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).

Appendix D

NOTICE OF DETERMINATION

TO: ☐ Secretary for Resources
1416 9th Street, Room 1311
Sacramento, California 95814
or
☐ County Clerk
County of _____

FROM: (Public Agency) _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

State Clearinghouse Number (If submitted to State Clearinghouse)

Contact Person Telephone Number

Project Location

Project Description

This is to advise that the _____
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following determinations regarding the above described project:

1. The project ☐ will ☐ will not have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
   The EIR or Negative Declaration and record of project approval may be examined at: _____
3. Mitigation measures ☐ were, ☐ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations ☐ was, ☐ was not, adopted for this project.

Date Received for Filing _____

Signature

Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY:

1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix E

NOTICE OF EXEMPTION

TO: ☐ Secretary for Resources
1416 Ninth Street, Room 1311
Sacramento, California 95814

☐ County Clerk
County of _____

FROM:

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Name of Public Agency Approving Project

Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

Reasons why project is exempt:

Contact Person Area Code Telephone Extension

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?
Yes__ No__

Date Received for Filing

Signature

Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

HISTORY:
1. New Appendix E filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

Appendix F

ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(1) decreasing overall per capita energy consumption,
(2) decreasing reliance on natural gas and oil, and
(3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Initial and life-cycle energy costs or supplies.
5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.

3. The effects of the project on peak and base period demands for electricity and other forms of energy.

4. The degree to which the project complies with existing energy standards.

5. The effects of the project on energy resources.

6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.

3. The potential for reducing peak energy demand.

4. Alternate fuels (particularly renewable ones) or energy systems.

5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176. Public Resources Code.

HISTORY:

1. New Appendix F filed 12-31-74 as an emergency; designated effective 1-7-75 (Register 75, No. 1).

2. Certificate of Compliance filed 4-29-75 (Register 75, No. 18).

3. Repealer and new Appendix F filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.

4. Amendment of Section II filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix G

SIGNIFICANT EFFECTS

A project will normally have a significant effect on the environment if it will:

(a) Conflict with adopted environmental plans and goals of the community where it is located;

(b) Have a substantial, demonstrable negative aesthetic effect;

(c) Substantially affect a rare or endangered species of animal or plant or the habitat of the species;

(d) Interfere substantially with the movement of any resident or migratory fish or wildlife species;

(e) Breach published national, state, or local standards relating to solid waste or litter control;

(f) Substantially degrade water quality;

(g) Contaminate a public water supply;

(h) Substantially degrade or deplete ground water resources;

(i) Interfere substantially with ground water recharge;

(j) Disrupt or adversely affect a prehistoric or historic archaeological site or a property of historic or cultural significance to a community or ethnic or social group; or a paleontological site except as a part of a scientific study;

(k) Induce substantial growth or concentration of population;

(l) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;

(m) Displace a large number of people;

(n) Encourage activities which result in the use of large amounts of fuel, water, or energy;

(o) Use fuel, water, or energy in a wasteful manner;

(p) Increase substantially the ambient noise levels for adjoining areas;

(q) Cause substantial flooding, erosion or siltation;

(r) Expose people or structures to major geologic hazards;

(s) Extend a sewer trunk line with capacity to serve new development;

(t) Substantially diminish habitat for fish, wildlife or plants;

(u) Disrupt or divide the physical arrangement of an established community;

(v) Create a potential public health hazard or involve the use, production or disposal of materials which pose a hazard to people or animal or plant populations in the area affected;

(w) Conflict with established recreational, educational, religious or scientific uses of the area;

(x) Violate any ambient air quality standard, contribute substantially to an existing or projected air quality violation, or expose sensitive receptors to substantial pollutant concentrations.

(y) Convert prime agricultural land to non-agricultural use or impair the agricultural productivity of prime agricultural land.

(z) Interfere with emergency response plans or emergency evacuation plans.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix G filed 10-8-76; effective thirtieth day thereafter (Register 76, No 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.

2. Amendment of subsections (n) and (o) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

3. Amendment of subsections (j) and (v) and new subsections (y) and (z) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix H

ENVIRONMENTAL INFORMATION FORM

(To be completed by applicant)

Date Filed _____

GENERAL INFORMATION

1. Name and address of developer or project sponsor: _____

2. Address of project: _____
Assessor's Block and Lot Number _____

3. Name, address, and telephone number of person to be contacted concerning this project: _____

4. Indicate number of the permit application for the project to which this form pertains: _____

5. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies: _____

6. Existing zoning district: _____

7. Proposed use of site (Project for which this form is filed): _____

PROJECT DESCRIPTION

8. Site size.
9. Square footage.
10. Number of floors of construction.
11. Amount of off-street parking provided.
12. Attach plans.
13. Propose scheduling.
14. Associated projects.
15. Anticipated incremental development.
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

YES NO

___ ___ 21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.

___ ___ 22. Change in scenic views or vistas from existing residential areas or public lands or roads.

___ ___ 23. Change in pattern, scale or character of general area of project.

___ ___ 24. Significant amounts of solid waste or litter.

___ ___ 25. Change in dust, ash, smoke, fumes or odors in vicinity.

___ ___ 26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.

___ ___ 27. Substantial change in existing noise or vibration levels in the vicinity.

___ ___ 28. Site on filled land or on slope of 10 percent or more.

___ ___ 29. Use of disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.

___ ___ 30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).

___ ___ 31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).

___ ___ 32. Relationship to a larger project or series of projects.

ENVIRONMENTAL SETTING

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.

34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date _____ _____

(Signature)

For_____

(NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix H filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 40). NOTE: Order designates that compliance with this appendix is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix I

ENVIRONMENTAL CHECKLIST FORM

(To be completed by Lead Agency)

I. BACKGROUND.

1. Name of Proponent _____
2. Address and Phone Number of Proponent:

_____

_____

_____

3. Date of Checklist Submitted _____
4. Agency Requiring Checklist _____
5. Name of Proposal, if applicable _____

_____

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required on attached sheets.)

	YES	MAYBE	NO
1. Earth. Will the proposal result in:			
a. Unstable earth conditions or in changes in geologic substructures?	___	___	___
b. Disruptions, displacements, compaction or overcovering of the soil?	___	___	___
c. Change in topography or ground surface relief features?	___	___	___
d. The destruction, covering or modification of any unique geologic or physical features?	___	___	___
e. Any increase in wind or water erosion of soils, either on or off the site?	___	___	___
f. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	___
g. Exposure of people or property to geologic hazards such as earthquakes, landslides, mudslides, ground failure, or similar hazards?			
2. Air. Will the proposal result in:			
a. Substantial air emissions or deterioration of ambient air quality?	___	___	___
b. The creation of objectionable odors?	___	___	___
c. Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	___	___	___
3. Water. Will the proposal result in:			
a. Changes in currents, or the course or direction of water movements, in either marine or fresh waters?	___	___	___
b. Changes in absorption rates, drainage patterns or the rate and amount of surface water runoff?	___	___	___
c. Alterations to the course or flow of flood waters?	___	___	___
d. Change in the amount of surface water in any water body?	___	___	___

	YES	MAYBE	NO
e. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity?	___	___	___
f. Alteration of the direction or rate of flow of ground waters?	___	___	___
g. Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations?	___	___	___
h. Substantial reduction in the amount of water otherwise available for public water supplies?	___	___	___
i. Exposure of people or property to water related hazards such as flooding or tidal waves?	___	___	___
4. Plant Life. Will the proposal result in:			
a. Change in the diversity of species, or number of any species of plants (including trees, shrubs, grass, crops, and aquatic plants)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of plants?	___	___	___
c. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	___	___	___
d. Reduction in acreage of any agricultural crop?	___	___	___
5. Animal Life. Will the proposal result in:			
a. Change in the diversity of species, or numbers of any species of animals (birds, land animals including reptiles, fish and shellfish, benthic organisms or insects)?	___	___	___
b. Reduction of the numbers of any unique, rare or endangered species of animals?	___	___	___
c. Introduction of new species of animals into an area, or result in a barrier to the migration or movement of animals?	___	___	___
d. Deterioration to existing fish or wildlife habitat?	___	___	___
6. Noise. Will the proposal result in:			
a. Increases in existing noise levels?	___	___	___
b. Exposure of people to severe noise levels?	___	___	___
7. Light and Glare. Will the proposal produce new light or glare?	___	___	___
8. Land Use. Will the proposal result in a substantial alteration of the present or planned land use of an area?	___	___	___
9. Natural Resources. Will the proposal result in:			
a. Increase in the rate of use of any natural resources?	___	___	___
b. Substantial depletion of any nonrenewable natural resource?	___	___	___
10. Risk of Upset. Will the proposal involve:			
a. A risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions?	___	___	___
b. Possible interference with an emergency response plan or an emergency evacuation plan?	___	___	___

	YES	MAYBE	NO
11. Population. Will the proposal alter the location, distribution, density, or growth rate of the human population of an area?	___	___	___
12. Housing. Will the proposal affect existing housing, or create a demand for additional housing?	___	___	___
13. Transportation/Circulation. Will the proposal result in:			
a. Generation of substantial additional vehicular movement?	___	___	___
b. Effects on existing parking facilities, or demand for new parking?	___	___	___
c. Substantial impact upon existing transportation systems?	___	___	___
d. Alterations to present patterns of circulation or movement of people and/or goods?	___	___	___
e. Alterations to waterborne, rail or air traffic?	___	___	___
f. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians?			
14. Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:			
a. Fire protection?	___	___	___
b. Police protection?	___	___	___
c. Schools?	___	___	___
d. Parks or other recreational facilities?	___	___	___
e. Maintenance of public facilities, including roads?			
f. Other governmental services?	___	___	___
15. Energy. Will the proposal result in:			
a. Use of substantial amounts of fuel or energy?	___	___	___
b. Substantial increase in demand upon existing sources of energy, or require the development of new sources of energy?	___	___	___
16. Utilities. Will the proposal result in a need for new systems, or substantial alterations to the following utilities:			
a. Power or natural gas?	___	___	___
b. Communications systems?	___	___	___
c. Water?	___	___	___
d. Sewer or septic tanks?	___	___	___
e. Storm water drainage?	___	___	___
f. Solid waste and disposal?	___	___	___
17. Human Health. Will the proposal result in:			
a. Creation of any health hazard or potential health hazard (excluding mental health)?	___	___	___
b. Exposure of people to potential health hazards?	___	___	___
18. Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view?	___	___	___

	YES	MAYBE	NO
19. Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities?	___	___	___
20. Cultural Resources.			
a. Will the proposal result in the alteration of or the destruction of a prehistoric or historic archeological site?	___	___	___
b. Will the proposal result in adverse physical or aesthetic effects to a prehistoric or historic building, structure, or object?	___	___	___
c. Does the proposal have the potential to cause a physical change which would affect unique ethnic cultural values?	___	___	___
d. Will the proposal restrict existing religious or sacred uses within the potential impact area?	___	___	___
21. Mandatory Findings of Significance.			
a. Does the project have the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	___	___	___
b. Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? (A short-term impact on the environment is one which occurs in a relatively brief, definitive period of time while long-term impacts will endure well into the future.)	___	___	___
c. Does the project have impacts which are individually limited, but cumulatively considerable? (A project may impact on two or more separate resources where the impact on each resource is relatively small, but where the effect of the total of those impacts on the environment is significant.)	___	___	___
d. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	___	___	___

III. DISCUSSION OF ENVIRONMENTAL EVALUATION

IV. DETERMINATION
(To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION WILL BE PREPARED.

☐ I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

Date _____ _____
(Signature)

For _____

(NOTE: This is only a suggested form. Public agencies are free to devise their own format for initial studies.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. New Appendix I filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this appendix is authorized but not mandatory before 1-1-77.
2. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
3. Amendment of Section II filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix J

NOTICE OF PREPARATION

TO: _____ FROM: _____
(Responsible Agency) (Lead Agency)
_____ _____
(Address) (Address)
_____ _____

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report

_____ will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

The project description, location, and the probable environmental effects are contained in the attached materials. A copy of the Initial Study ☐ is, ☐ is not, attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 45 days after receipt of this notice.

Please send your response to _____ at the address shown above. We will need the name for a contact person in your agency.

Project Title:

Project Applicant, if any:

Date _____ Signature _____
Title _____
Telephone _____

Reference: California Administrative Code, Title 14, Sections 15035.7, 15054.3, 15066.

HISTORY:

1. New Appendix J filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).

Appendix K
Archaeological Impacts

I. CEQA applies to effects on historic and prehistoric archaeological resources.

II. Public agencies should seek to avoid damaging effects on an archaeological resource whenever feasible. If avoidance is not feasible, the importance of the site shall be evaluated using the criteria outlined in Section III.

A. In-situ preservation of a site is the preferred manner of avoiding damage to archaeological resources. Preserving the site is more important than preserving the artifacts alone because the relationship of the artifacts to each other in the site provides valuable information that can be lost when the artifacts are removed. Further, preserving the site keeps it available for more sophisticated future research methods. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

B. Avoiding damage may be accomplished by many approaches, including:

1. Planning construction to miss archaeological sites;

2. Planning parks, greenspace, or other open space to incorporate archaeological sites;

3. "Capping" or covering archeological sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be used where:

a. The soils to be covered will not suffer serious compaction;

b. The covering materials are not chemically active;

c. The site is one in which the natural processes of deterioration have been effectively arrested; and

d. The site has been recorded.

4. Deeding archaeological sites into permanent conservation easements.

III. If the lead agency determines that a project may affect an archaeological resource, the agency shall determine whether the effect may be a significant effect on the environment. If the project may cause damage to an important archaeological resource, the project may have a significant effect on the environment. For the purposes of CEQA, an "important archaeological resource" is one which:

A. Is associated with an event or person of:

1. Recognized significance in California or American history or

2. Recognized scientific importance in prehistory.

B. Can provide information which is both of demonstrable public interest and useful in addressing scientifically consequential and reasonable archaeological research questions,

C. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind,

D. Is at least 100 years old and possesses substantial stratigraphic integrity, or

E. Involves important research questions that historical research has shown can be answered only with archaeological methods.

IV. If an archaeological resource is not an important archaeological resource, both the resource and the effect on it shall be noted in the initial study or EIR but need not be considered further in the CEQA process.

V. If avoidance of the important archaeological resource is not feasible, the lead agency should include an excavation plan for mitigating the effect of the project on the qualities which make the resource important under Section III.

A. If an excavation plan is prepared, it shall:

1. Be a brief summary of the excavation proposed as part of a mitigation plan;

2. Be available for review only on a need-to-know basis;

3. Not include the specific location of any archaeological resources if the plan will be made known to the general public.

B. An excavation plan may:

1. List and briefly discuss the important information the archaeological resources contain or are likely to contain;

2. Explain how the information should be recovered to be useful in addressing scientifically valid research questions and other concerns identified in subdivision (a);

3. Explain the methods of analysis and, if feasible, display of excavated materials;
4. Provide for final report preparation and distribution; and,
5. Explain the estimated cost of and time required to complete all activities undertaken under the plan.

C. The lead agency may require a mitigation plan to be carried out as a condition of approval of the project.

VI. A public agency following federal clearance process under the National Historic Preservation Act or the National Environmental Policy Act may use the documentation prepared under the federal guidelines in the place of documentation called for in this appendix.

VII. LIMITATIONS ON MITIGATION. Special rules apply to mitigating significant effects on important archaeological resources.

A. If it is not feasible to revise the project to avoid an important archaeological resource, the lead agency shall require the project applicant to guarantee to pay one half of the cost of mitigating the significant effect of the project on important archaeological resources.

1. In determining the payment to be required from the applicant, the lead agency shall consider the in-kind value of project design or expenditures intended to permit any or all important archaeological resources or California Native American culturally significant sites to be undisturbed or preserved in place.

a. Consideration of in-kind values does not require a dollar for dollar set-off against the payment by the project applicant.

b. In deciding on an appropriate set-off, the lead agency shall consider such factors as whether the project design or expenditures would provide other benefits to the applicant and whether the design or expenditures required special changes in the project plans.

2. When it decides to carry out or approve the project, the lead agency shall, if necessary, reduce the mitigation measures specified in the EIR to those which can be funded with:

a. The money guaranteed by the project applicant, and

b. Money voluntarily guaranteed by any other person or persons for the mitigation.

3. In order to allow time for interested persons to provide a voluntary funding guarantee, the lead agency shall not decide to carry out or approve a project having a significant effect on important archaeological resources until 60 days after completing the final EIR on the project.

4. In no event shall the lead agency require the applicant to pay more for mitigation within the site of the project than the following amounts:

a. One half of one percent of the projected cost of the project, if the project is a commercial or industrial project.

b. Three fourths of one percent of the projected cost of the project for a housing project consisting of one unit.

c. If a housing project consists of more than one unit, three fourths of one percent of the projected cost of the first unit plus the sum of the following:

(i) $200 per unit for any of the next 99 units,
(ii) $150 per unit for any of the next 400 units,
(iii) $100 per unit for units in excess of 500.

B. Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after the applicant receives the final approval necessary to begin physical development of the project.

1. With a phased project, the mitigation measures shall be completed within 90 days after approval is granted for the phased portion to which the specific mitigation measures apply.

2. The project applicant can elect to extend the time limits for completing the field excavation phase of the approved mitigation plan.

3. A mitigation plan shall not authorize violation of any law protecting American Indian cemeteries.

C. Excavation as part of a mitigation plan shall be restricted to those parts of an important archaeological resource that would be damaged or destroyed by the project unless special circumstances require limited excavation of an immediately adjacent area in order to develop important information about the part of the resource that would be destroyed.

D. Excavation as mitigation shall not be required for an important archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, provided that the determination is documented in the EIR.

E. The limitations on mitigation shall not apply to:

1. A public project if the lead agency decides to comply with other provisions of CEQA that apply to mitigation of significant effects, and

2. A private project if the applicant and the lead agency jointly elect to comply with other provisions of CEQA that apply to mitigation of significant effects.

F. The time and cost limitations described in this section do not apply to surveys and site evaluation activities intended to determine whether the project location contains archaeological resources, and if so, whether the archaeological resources are important as defined in this appendix.

VIII. Discovery of Human Remains.

A. In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

1. The coroner of the county in which the remains are discovered has been informed and has determined that no investigation of the cause of death is required, and

2. If the remains are of Native American origin,

a. The descendants from the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

b. The Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission.

B. Where the following conditions occur, the landowner or his authorized representative shall reinter the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

1. The Native American Heritage Commission is unable to identify a descendant;

2. The descendant identified fails to make a recommendation; or

3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

C. If the human remains are discovered before the lead agency has finished the CEQA process, the lead agency shall work with the Native American Heritage Commission and the applicant to develop an agreement for treating or disposing, with appropriate dignity, of the human remains and any associated grave goods. Action implementing such an agreement is exempt from:

1. The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

2. The requirements of CEQA and the Coastal Act.

IX. As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency should make provisions for archaeological sites accidentally discovered during construction. These provisions should include an immediate evaluation of the find. If the find is determined to be an important archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures should be available. Construction work could continue on other parts of the building site while archaeological mitigation takes place.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 7050.5, Health and Safety Code; Sections 5097.98, 21001(b) and (c), and 21083.2, Public Resources Code; *Society for California Archaeology* v. *County of Butte*, (1977) 65 Cal. App. 3d 832.

HISTORY:

1. New Appendix K filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15061

§ 15062

§ 15075

§ 15082

§ 15085

§ 15087

§ 15094

15005. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provide by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 75, No. 1.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Editorial correction of 7-13-83 order filed 7-26-83 (Register 83, No. 33).

15006. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of lead agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15083)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(*l*) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15152)

(n) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic environmental impact reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing environmental impact reports in plain language. (15140)

(r) Following a clear format for environmental impact reports. (15120)

(s) Emphasizing the portions of the environmental impact report that are useful to decision-makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on environmental impact reports as specific as possible. (15204)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21083, Public Resources Code.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 80, No. 19.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Amendment of subsections (g), (m) and (u) filed 1-30-96; effective thirtieth day thereafter (Register 96, No. 5).

15007. Amendments.

(a) These guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content requirements in guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the guidelines beginning with the earlier of the following two dates:

(1) The effective date of the agency's procedures amended to conform to the new guideline amendments; or

(2) The 120th day after the effective date of the guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the guidelines beginning with the effective date of the guideline amendments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21087, Public Resources Code; *Stevens* v. *City of Glendale*, 125 Cal. App. 3d 986.

HISTORY:

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15023. Office of Planning and Research (OPR).

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources. People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 30 days after receiving a notice of preparation.

(f) OPR shall resolve disputes as to which agency is the lead agency for a project.

(g) OPR shall receive and file all notices of completion, determination, and exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21060.4, 21083, 21086, 21087, 21108 and 21161, Public Resources Code.

HISTORY:

1. Amendment of subsection (e) and new subsection (g) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15024. Secretary for Resources.

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices required by certified state environmental regulatory programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.5, 21083, 21084, 21086, 21087, 21088 and 21152, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15025. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.

(3) Preparing a negative declaration or EIR.

(4) Determining that a negative declaration has been completed within a period of 105 days.
(5) Preparing responses to comments on environmental documents.
(6) Filing of notices.
(b) The decisionmaking body of a public agency shall not delegate the following functions:
(1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.
(2) The making of findings as required by Sections 15091 and 15093.
(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082, Public Resources Code; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

15040. Authority Provided by CEQA.
(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.
(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.
(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.
(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.
(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, Etc., Dist.* v. *Muzzi,* (1978) 83 Cal. App. 3d 707; *E.D.F.* v. *Mathews,* 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth* v. *Board of Supervisors,* (1972) 8 Cal. 3d 247; *Pinewood Investors* v. *City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY:
1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15041. Authority to Mitigate.

Within the limitations described in Section 15040, (a) A lead agency for a project has authority to require changes in any or all activities involved in the project in order to lessen or avoid significant effects on the environment.

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi,* 83 Cal. App. 3d 707.

15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County,* 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill,* 121 Cal. App. 3d 203.

15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco,* (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill,* (1981) 121 Cal. App. 3d 203.

15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15045. Fees.

(a) All lead agencies preparing EIRs and negative declarations for projects to be carried out by any person or entity other than the lead agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or negative declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code; and Sections 6250 et seq., Government Code.

Article 4. Lead Agency

15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY:

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes may be found in Title 14, California Administrative Code, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15052 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Administrative Code, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

15060. Preliminary Review.

(a) A public agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project.

(c) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

HISTORY:

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15061. Review for Exemption.

(a) As part of the preliminary review, a public agency shall determine whether a particular activity is exempt from CEQA.

(b) Possible exemptions from CEQA include:

(1) The activity is not a project as defined in Section 15378.

(2) The project has been granted an exemption by statute (see Article 18, commencing with Section 15260) or by categorical exemption (see Article 19, commencing with Section 15300).

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*, 13 Cal. 3d 68.

HISTORY:

1. Amendment of subsection (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt, including a citation to the State Guidelines section under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption shall be filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption will be filed with the county clerk of the county or counties in which the project will be located. Copies of all such notices will be available for public inspection and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

(3) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant shall be filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice shall be filed with OPR. If the permit was granted by a local agency, the notice shall be filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant shall be subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY:

1. Amendment of subsections (b) and (c) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an initial study or a similar analysis prepared pursuant to the National Environmental Policy Act.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall either:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand.

(2) The lead agency shall prepare a negative declaration if the agency perceives no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant, and

(C) Explaining the reasons for determining that potentially significant effects would not be significant.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an initial study. These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

15075. Notice of Determination.

(a) After deciding to carry out or approve a project for which a negative declaration has been approved, the lead agency shall file a notice of determination.

(b) The notice of determination shall include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration may be examined.

(c) If the lead agency is a state agency, the notice of determination shall be filed with OPR.

(d) If the lead agency is a local agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires a discretionary approval from any state agency, the notice of determination also shall be filed with OPR.

(e) The filing of the notice of determination and the posting on a list of such notices starts a 30-day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY:

1. Amendment of subsections (c) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

Article 6.5. Statutory Exemptions

HISTORY:

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

Article 7. EIR Process

15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY:

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15′ or 7½′ topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY:

1. Amendment of subsection (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY:

1. Amendment of subsections (a) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Other state, federal, and local agencies which exercise authority over resources which may be affected by the project.

(b) The lead agency may consult directly with any person who has special expertise with respect to any environmental impact involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to owners of property contiguous to the parcel or parcels on which the project is located as those owners are shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days from the date of the notice except in unusual situations. The review period for draft EIRs for which a state agency is the lead agency or a responsible agency shall be at least 45 days unless a shorter period is approved by the State Clearinghouse.

(d) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(e) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(f) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(g) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21092, 21104, 21153 and 21161, Public Resources Code; and Section 6061, Government Code.

HISTORY:

1. Amendment of subsection (a) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary* v. *County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

15090. Certification of Final EIR.

The lead agency shall certify that:

(a) The final EIR has been completed in compliance with CEQA; and

(b) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code; *City of Carmel-by-the-Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been completed which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a) (2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21081, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus*, 118 Cal. App. 3d 348.

15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

15093. Statement of Overriding Considerations.

(a) CEQA requires the decisionmaker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable".

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091 (a) (2) or (a) (3).

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975); *City of Carmel-by-the-Sea* v. *Board of Supervisors* 71 Cal. App. 3d 84 (1977).

15094. Notice of Determination.

(a) The lead agency shall file a notice of determination following each project approval for which an EIR was considered. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) The filing of the notice of determination and the posting on a list of such notice starts a 30-day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY:

1. Amendment of subsections (b) and (c) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo* v. *Yorty*, (1973) 32 Cal. App. 3d 795.

15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY:

1. Amendment of subsections (b) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

Article 8. Time Limits

15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and may ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15105. Public Review.

(a) The public review period for a draft EIR should not be less than 30 days nor longer than 90 days except in unusual circumstances.

(b) The public review period for a negative declaration shall be a reasonable period of time sufficient to allow members of the public to respond to the proposed finding before the negative declaration is approved.

(c) If a draft EIR or negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092, Public Resources Code; *People* v. *County of Kern*, 39 Cal. App. 3d 830.

15106. Review by State Agencies.

When a draft EIR or negative declaration is submitted to the State Clearinghouse for review, the normal review period is 45 days for draft EIRs and 30 days for negative declarations. The State Clearinghouse may set shorter review periods when requested by the lead agency due to exceptional circumstances.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

15107. Completion of Negative Declaration.

With a private project, the negative declaration must be completed and ready for approval within 105 days from the date when the lead agency accepted the application as complete. The negative declaration may be approved at a later time when the permit or other entitlement is approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

15110. Projects With Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR-EIS or combined negative declaration-finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91-190 as amended, 42 U.S.C.A. 4321–4347.

HISTORY:

1. Amendment of subsection (a)(2) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15111. Projects With Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY:

1. New Article 12 (Sections 15190–15192) filed 1-6-76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4-2-76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7-13-83; effective 8-1-83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a further, specific finding as to:

1. Whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

15183. Residential Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) In approving a residential project meeting the requirements of this section, a public agency shall limit its examination of environmental effects under CEQA to effects which:

(1) Are peculiar to the project or the parcel on which the project would be located, although the effect may occur on or off the site of the project, and

(2) Were not analyzed as significant effects in a prior EIR on the zoning, general plan or community plan with which the residential project is consistent.

(b) This section shall apply only to residential projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan or zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of residential development, or

(B) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action or the general plan.

(c) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(d) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects. The finding shall be based on substantial evidence which need not include an EIR. Examples of uniformly applied development policies or standards include:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(e) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(f) Where a community plan meets the requirements of this section, any rezoning action consistent with the community plan shall be treated as a residential project subject to this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY:

1. Amendment of section heading and subsections (a) (2) and (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

Article 13. Review and Evaluation of EIRs and Negative Declarations

15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,
(b) Disclosing agency analyses,
(c) Checking for accuracy,
(d) Detecting omissions,
(e) Discovering public concerns, and
(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY:

1. New Article 13 (Sections 15201–15203) filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

15310. Loans.

Class 10 consists of loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. Class 10 includes but is not limited to the following examples:

(a) Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943.

(b) Purchases of mortgages from banks and mortgage companies by the Public Employees Retirement System and by the State Teachers Retirement System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15311. Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(a) On-premise signs;

(b) Small parking lots;

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15312. Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide, regional, or areawide concern identified in Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife habitat or other environmental purposes, and

(b) Any of the following conditions exist:

(1) The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or

(2) The property to be sold would qualify for an exemption under any other class of categorical exemption in these guidelines; or

(3) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15313. Acquisition of Lands for Wildlife Conservation Purposes.

Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15314. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15315. Minor Land Divisions.

Class 15 consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15316. Tranfer of Ownership of Land in Order to Create Parks.

Class 16 consists of the acquisition or sale of land in order to establish a park where the land is in a natural condition or contains historic sites or archaelogical sites and either:

(a) The management plan for the park has not been prepared, or

(b) The management plan proposes to keep the area in a natural condition or preserve the historical or archaeological site. CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historic or archaeological site.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15317. Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserves, contracts, interests, or easements is not included and will normally be an action subject to the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15318. Designation of Wilderness Areas.

Class 18 consists of the designation wilderness areas under the California Wilderness System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

15371. Negative Declaration.

"Negative declaration" means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

15372. Notice of Completion.

"Notice of completion" means a brief notice filed with the OPR by a lead agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY:

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

15373. Notice of Determination.

"Notice of determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(a) and 21152, Public Resources Code.

15374. Notice of Exemption.

"Notice of exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(b) and 21152(b), Public Resources Code.

15375. Notice of Preparation.

"Notice of preparation" means a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

15376. Person.

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, city, county, city and county, town, the state, and any of the agencies or political subdivisions of such entities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15377. Private Project.

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or

(b) A lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15378. Project.

(a) "Project" means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law;

(2) Proposals for legislation to be enacted by the State Legislature;

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, emergency repairs to public service facilities, general policy and procedure making (except as they are applied to specific instances covered above);

(4) The submittal of proposals to a vote of the people of the state or of a particular community. (Stein v. City of Santa Monica, 110 Cal. App. 3d 458);

(5) The closing of a public school and the transfer of students to another school where the only physical changes involved are categorically exempt. (Prentiss v. Board of Education, 111 Cal. App. 3d 847; But see, Fullerton Joint Union High School District v. State Board of Education (Dec. 2, 1982) Cal. 3d, Slip Opinion Footnote 16 at page 27.)

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under Subsection (a) (1) or as a development proposal which will be subject to several governmental approvals under Subsections (a) (2) or (a) (3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

15379. Public Agency.

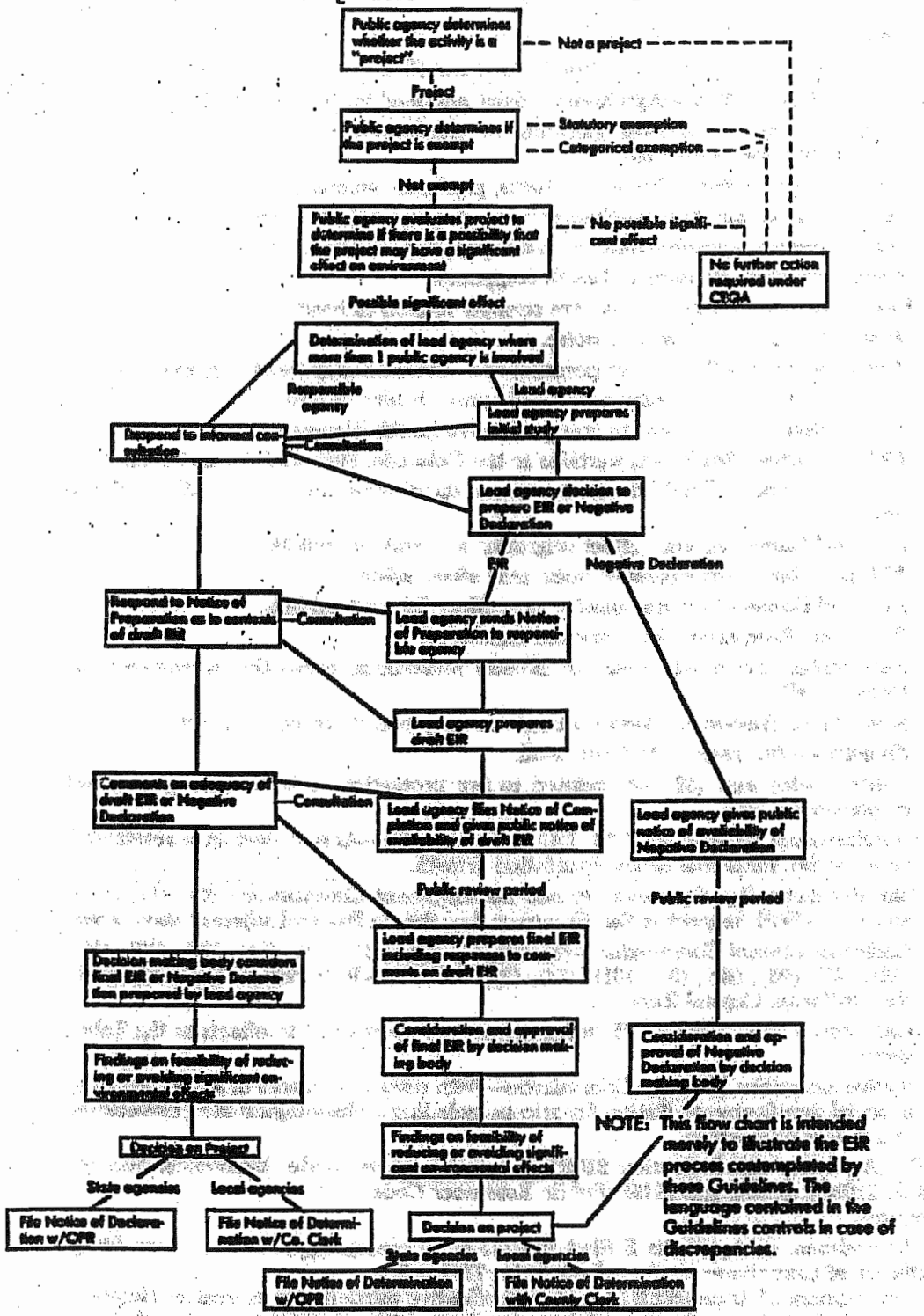
"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21063, Public Resources Code.

APPENDICES

Appendix A	Flow Chart
Appendix B	Subjects of Environmental Concern
Appendix C	Notice of Completion Form
Appendix D	Notice of Determination
Appendix E	Notice of Exemption
Appendix F	Energy Conservation
Appendix G	Significant Effects
Appendix H	Environmental Information Form
Appendix I	Environmental Checklist Form
Appendix J	Notice of Preparation
Appendix K	Archaeological Impacts

APPENDIX A
CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY:

1. Amendment of Appendix A filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5). For prior history, see Registers 80, No. 19 and 73, No. 50.

APPENDIX B FOOTNOTES

No.

1. *Food and Agriculture*—Effects on plants and animals.
2. *Food and Agriculture*—Protection of food and fiber.
3. *Food and Agriculture*—Agricultural, dairy and feed lot systems.
4. *Food and Agriculture*—As pertains to transportation, handling, storage and decontamination of pesticides.
5. *Food and Agriculture*—Pesticide effects, predatory animal control, bird control.
6. *California Highway Patrol*—Enforcement of motor vehicle regulations.
7. *Health Services*—Beach sanitation, water pollution, solid waste and mosquito control.
8. *Health Services*—Pertains to health component.
9. *Health Services*—Most of these are strongly related to health.
10. *Health Services*—Pertains to noise.
11. *Health Services*—Pertains to personal and environmental health components.
12. Health Services—As it may pertain to human health hazards.
13. *Health Services*—Pertains to comprehensive health planning.
14. *Colorado River Board*—As pertains to the Colorado, New and Alamo Rivers.
15. *Fish and Game*—As field development and distribution systems may affect fish and wildlife.
16. *Fish and Game*—As may affect migrating and resident wildlife.
17. *Fish and Game*—As excessive noise may affect wildlife.
18. *Fish and Game*—As water quality may affect fish and wildlife.
19. *Parks and Recreation*—In impacted areas only.
20. *Reclamation Board*—In areas of Board's jurisdiction only—the Sacramento-San Joaquin Valley.
21. *State Water Resources Control Board*—As may pertain to water quality.
22. *Forestry*—With respect to forest land.
23. *Forestry*—(6) and (32)—As related to fire protection or State (fire protection) responsibility land.
24. *Air Resources Board*—(4), (22), (32), (33), and (36)—As may pertain to residential, commercial, industrial or transportation growth.
25. *San Francisco Bay Conservation and Development Commission*—(3), (17), (19), and (30)—With respect to San Francisco Bay, Suisun Bay and adjacent shore areas.
26. *California Coastal Commission*—(3), (4), (6), (8), (11), (12), (14), (15), (17), (19), (22), (23), (26), (29), (30), (31), (34), (35), and (36)—With respect to effects within the California Coastal Zone.
27. *California Tahoe Regional Planning Agency*—With respect to effects in the Tahoe Basin.
28. *Native American Heritage Commission*—With respect to places of special religious or social significance to Native Americans including archaeological sites, cemeteries, and places of worship.

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

HISTORY:

1. Amendment of Appendix B filed 12-15-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix B filed 10-8-76; effective thirtieth day thereafter (Register 76, No. 41). NOTE: Order designated that compliance with this amendment is authorized but not mandatory before 1-1-77.
3. Amendment of Appendix B and Footnotes filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

Appendix C

NOTICE OF COMPLETION

State of California
Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Lead Agency Division

Address Where Copy of EIR is Available

Review Period

Contact Person Area Code Phone Extension

HISTORY:

1. Amendment of Appendix C filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Amendment of Appendix C filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

Appendix D

NOTICE OF DETERMINATION

TO: ☐ Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814
or
☐ County Clerk
County of _____

FROM: (Public Agency) _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

State Clearinghouse Number (If submitted to State Clearinghouse)

Contact Person Telephone Number

Project Location

Project Description

This is to advise that the _____
(Lead Agency or Responsible Agency)
has approved the above described project and has made the following determinations regarding the above described project:

1. The project ☐ will ☐ will not have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
   The EIR or Negative Declaration and record of project approval may be examined at: _____
3. Mitigation measures ☐ were, ☐ were not, made a condition of the approval of the project.
4. A statement of Overriding Considerations ☐ was, ☐ was not, adopted for this project.

Date Received for Filing _____

Signature

Title

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code.

HISTORY:

1. New Appendix D filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer and new Appendix D filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
3. Amendment filed 2-2-78; effective thirtieth day thereafter (Register 78, No. 5).
4. Amendment filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).
5. Amendment of Appendix D filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

Appendix E

NOTICE OF EXEMPTION

TO: ☐ Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814

☐ County Clerk
County of _____

_____ _____

_____ _____

FROM:

Project Title

Project Location—Specific

Project Location—City Project Location—County

Description of Nature, Purpose, and Beneficiaries of Project

Name of Public Agency Approving Project

Name of Person or Agency Carrying Out Project

Exempt Status: (Check One)

____Ministerial (Sec. 15073)
____Declared Emergency (Sec. 15071(a))
____Emergency Project (Sec. 15071(b) and (c))
____Categorical Exemption. State type and section number:

Reasons why project is exempt:

Contact Person Area Code Telephone Extension

If filed by applicant:
1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?
Yes__ No__

Date Received for Filing

Signature

Title

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21108, 21152, 21167, Public Resources Code and Chap. 56, Stats. 1974.

HISTORY:
1. New Appendix E filed 3-26-74 as an emergency; effective upon filing (Register 74, No. 13).
2. Certificate of Compliance filed 6-26-74 (Register 74, No. 26).
3. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
4. Amendment of Appendix E filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

Title 14, CCR, Register 94-33

§ 15063

§ 15072

§ 15087

§ 15088.5

§ 15126

§ 15162

§ 15164

by a state agency, the notice shall be filed with OPR. If the permit was granted by a local agency, the notice shall be filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant shall be subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an initial study or a similar analysis prepared pursuant to the National Environmental Policy Act.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15064. Determining Significant Effect.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) When a lead agency determines that there is substantial evidence that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the pub-

lic agency involved, based to the extent possible on scientific and factual data. An iron clad definition of significant effect is not possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected. If the lead agency expects that there will be a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency shall regard the effect as adverse. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider both primary or direct and secondary or indirect consequences.

(1) Primary consequences are immediately related to the project such as the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) Secondary consequences are related more to effects of the primary consequences than to the project itself and may be several steps removed from the project in a chain of cause and effect. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(e) Some examples of consequences which may be deemed to be a significant effect on the environment are contained in Appendix G.

(f) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as the basis for determining that the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(g) The decision as to whether a project may have one or more significant effects shall be based on information in the record of the lead agency.

(1) If the lead agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency finds there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(h) In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors:

(1) If there is serious public controversy over the environmental effects of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR. Controversy unrelated to an environmental issue does not require preparation of an EIR.

(2) If there is a disagreement between experts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an EIR.

(i) If an air emission or water discharge meets the existing standard for a particular pollutant, the lead agency may presume that the emission or discharge of the pollutant will not be a significant effect on the environment. If other information is presented suggesting that the emission or discharge may cause a significant effect, the lead agency shall evaluate the effect and decide whether it may be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*.

§ 15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative Declaration.

A proposed negative declaration shall be prepared for a project subject to CEQA when either:

(a) The initial study shows that there is no substantial evidence that the project may have a significant effect on the environment, or

(b) The initial study identified potentially significant effects but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence before the agency that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp.* v. *Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060–15069.8) and new Article 6 (Sections 15070–15075) filed 7–13–83; designated effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15072. Public Notice.

(a) Notice that the lead agency proposes to adopt a negative declaration shall be provided to the public within a reasonable period of time, but not less than 20 days (unless the negative declaration is submitted to the State Clearinghouse for review, in which case the review period shall be at least 30 days), prior to adoption by the lead agency of the negative declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091(b) and 21092, Public Resources Code; Section 6061, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15073. Public Review of a Negative Declaration.

(a) The lead agency shall provide a public review period for a proposed negative declaration. The noticed public review period shall be long enough to provide members of the public with sufficient time to respond to the proposed finding before the negative declaration is approved.

(b) A copy of the notice with the proposed negative declaration shall be sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(c) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, the lead agency shall send copies of the negative declaration to the State Clearinghouse for distribution to the state agencies.

(d) When a negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall be not less than 30 days unless a shorter period is approved by the State Clearinghouse.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(e), 21003(b) and 21080(c), Public Resources Code; *Plagmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

§ 15074. Consideration and Approval of Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration before making its recommendation.

(b) Prior to approving the project, the decisionmaking body of the lead agency shall consider the proposed negative declaration together with any comments received during the public review process. The decisionmaking body shall approve the negative declaration if it finds on the basis of the initial study and any comments received that there is no substantial evidence that the project will have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

§ 15075. Notice of Determination.

(a) After deciding to carry out or approve a project for which a negative declaration has been approved, the lead agency shall file a notice of determination.

(b) The notice of determination shall include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration may be examined.

(c) If the lead agency is a state agency, the notice of determination shall be filed with OPR.

(d) If the lead agency is a local agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires a discretionary approval from any state agency, the notice of determination also shall be filed with OPR.

(e) The filing of the notice of determination and the posting on a list of such notices starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060

or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15′ or 7 1/2′ topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judg-

ment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Other state, federal, and local agencies which exercise authority over resources which may be affected by the project.

(b) The lead agency may consult directly with any person who has special expertise with respect to any environmental impact involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) In order to provide sufficient time for public review, review periods for draft EIRs should not be less than 30 days nor longer than 90 days from the date of the notice except in unusual situations. The review period for draft EIRs for which a state agency is the lead agency or a responsible agency shall be at least 45 days unless a shorter period is approved by the State Clearinghouse.

(d) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(e) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(f) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(g) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21104, 21153 and 21161, Public Resources Code; and Section 6061, Government Code.

HISTORY

1. Amendment of subsection (a) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary* v. *County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

§ 15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

§ 15090. Certification of Final EIR.

The lead agency shall certify that:

(a) The final EIR has been completed in compliance with CEQA; and (b) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been completed which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21081, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus*, 118 Cal. App. 3d 348.

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association v. City Council*, (1978) 83 Cal. App. 3d 515.

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decisionmaker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091(a)(2) or (a)(3).

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975); *City of Carmel–by–the–Sea* v. *Board of Supervisors* 71 Cal. App. 3d 84 (1977).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination following each project approval for which an EIR was considered. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) The filing of the notice of determination and the posting on a list of such notice starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15105. Public Review.

(a) The public review period for a draft EIR should not be less than 30 days nor longer than 90 days except in unusual circumstances.

(b) The public review period for a negative declaration shall be a reasonable period of time sufficient to allow members of the public to respond to the proposed finding before the negative declaration is approved.

(c) If a draft EIR or negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092, Public Resources Code; *People* v. *County of Kern*, 39 Cal.App. 3d 830.

§ 15106. Review by State Agencies.

When a draft EIR or negative declaration is submitted to the State Clearinghouse for review, the normal review period is 45 days for draft EIRs and 30 days for negative declarations. The State Clearinghouse may set shorter review periods when requested by the lead agency due to exceptional circumstances.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15107. Completion of Negative Declaration.

With a private project, the negative declaration must be completed and ready for approval within 105 days from the date when the lead agency accepted the application as complete. The negative declaration may be approved at a later time when the permit or other entitlement is approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one–year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Magglni*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one–year time limit for completing and certifying a final EIR or the 105–day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR–EIS or combined negative declaration–finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR–EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Govern-

ment Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action within 50 days on a tentative subdivision map for which an EIR is being or will be prepared pursuant to Article 2 (commencing with Section 66452) of Chapter 3, Division 2, Title 2 of the Government Code, but a negative declaration for a subdivision map must be completed within the 50 day period (see Government Code Section 66452.1(c)),

(2) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(3) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(4) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the application shall be made within one year from the date on which an application requesting approval of such project has been received and accepted as complete for CEQA processing by such agency. This one-year time limit may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C. v. Arcata National Corp.*, 59 Cal. App. 3d 959 (1976).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel v. City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100 and 21105, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd. v. Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of the approvals for which the EIR will be used.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles*, 71 Cal. App. 3d 185 (1977).

§ 15125. Environmental Setting.

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State Implementation Plan once adopted), area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350.

§ 15126. Environmental Impact.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(A) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Any Significant Environmental Effects Which Cannot be Avoided if the Proposal is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Mitigation Measures Proposed to Minimize the Significant Effects. Describe measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified if one has been selected. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale*, 125 Cal. App. 3d 986).

(d) Alternatives to the Proposed Action. Describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

(1) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(2) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record.

(3) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall

be discussed but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles*, 124 Cal.App.3d 1.)

(4) "No project" alternative. The specific alternative of "no project" shall also be evaluated along with its impact. The "no project" analysis shall discuss the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(5) Rule of reason. The range of alternatives required in an EIR is governed by "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(A) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood*, (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(B) Alternative locations.

1. Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

2. None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations fo a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

3. Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d 553, 573).

(C) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App. 3d 274).

(e) The Relationship Between Local Short–Term Uses of Man's Environment and the Maintenance and Enhancement of Long–Term Productivity. Describe the cumulative and long–term effects of the proposed project which adversely affect the state of the environment. Special attention should be given to impacts which narrow the range of beneficial uses of the environment or pose long–term risks to health or safety. In addition, the reasons why the proposed project is believed by the sponsor to be justified now, rather than reserving an option for further alternatives, should be explained.

(f) Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(g) The Growth–Inducing Impact of the Proposed Action. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553 (1990); *Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal. 3d 376 (1988); and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)–(4), amendment of subsection (d)(5), new subsections (d)(5)(A)–(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126(e) concerning short–term uses versus long–term productivity, and (f) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code; 42 U.S.C. 4321–4347.

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Cumulative Impacts.

(a) Cumulative impacts shall be discussed when they are significant.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need

not provide as great detail as is provided of the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness. The following elements are necessary to an adequate discussion of cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or area-wide conditions. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083(b), Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397.

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(g) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) Agencies are encouraged to tier EIRs which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the EIR on the actual issues ripe for decision at each level of environmental review.

(b) Where an EIR has been prepared for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR on the project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(c) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project would be located.

(d) The initial study shall be used to decide whether and to what extent the prior EIR is still sufficient for the present project.

(e) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be ex-

amined. The later EIR should state that the lead agency is using the tiering concept and that the EIR is being tiered with the earlier EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. New Article 11 (Section 15180) filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160–15170) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) If the project was approved prior to the occurrence of the conditions described in Subsection (a), the subsequent EIR or negative declaration shall be prepared by the public agency which grants the next discretionary approval for the project. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986); and *Benton v. Board of Supervisors*, 226 Cal.App.3d 1467 (1991).

History

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision–making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision–making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986); and *Benton v. Board of Supervisors*, 226 Cal.App.3d 1467 (1991).

History

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

§ 15167. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren–Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case–by–case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

[The next page is 685.]

§ 15365. Initial Study.

"Initial study" means a preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the initial study is discussed in Article 5, commencing with Section 15060.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21080.2, 21080.3 and 21100, Public Resources Code.

§ 15366. Jurisdiction by Law.

(a) "Jurisdiction by law" means the authority of any public agency:

(1) To grant a permit or other entitlement for use,

(2) To provide funding for the project in question, or

(3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

(1) The site of the project;

(2) The area in which the major environmental effects will occur; and/or

(3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a responsible agency, see Section 15381, or the lead agency, see Section 15367.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21104 and 21153, Public Resources Code.

§ 15367. Lead Agency.

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project. The lead agency will decide whether an EIR or negative declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the lead agency for a project are contained in Section 15051.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15368. Local Agency.

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21062 and 21151, Public Resources Code.

§ 15369. Ministerial.

"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. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

§ 15370. Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21100(c), Public Resources Code.

§ 15371. Negative Declaration.

"Negative declaration" means a written statement by the lead agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a negative declaration are described in Section 15071.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15372. Notice of Completion.

"Notice of completion" means a brief notice filed with the OPR by a lead agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15373. Notice of Determination.

"Notice of determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(a) and 21152, Public Resources Code.

§ 15374. Notice of Exemption.

"Notice of exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108(b) and 21152(b), Public Resources Code.

§ 15375. Notice of Preparation.

"Notice of preparation" means a brief notice sent by a lead agency to notify the responsible agencies, trustee agencies, and involved federal agencies that the lead agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15376. Person.

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, city, county, city and county, town, the state, and any of the agencies or political subdivisions of such entities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

§ 15377. Private Project.

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

(a) A contract or financial assistance, or

(b) A lease, permit, license, certificate, or other entitlement for use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code.

§ 15378. Project.

(a) "Project" means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Anything specifically exempted by state law;

(2) Proposals for legislation to be enacted by the State Legislature;

(3) Continuing administrative or maintenance activities, such as purchases for supplies, personnel–related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(4) The submittal of proposals to a vote of the people of the state or of a particular community. (*Stein v. City of Santa Monica*, 110 Cal. App. 3d 458);

(5) The creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under Subsection (a)(1) or as a development proposal which will be subject to several governmental approvals under Subsections (a)(2) or (a)(3), the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21065, Public Resources Code; *Kaufman and Broad–South Bay, Inc. v. Morgan Hill Unified School District*, 9 Cal.App.4th 464 (1992); and *Fullerton Joint Union High School District v. State Board of Education*, 32 Cal.3d 779 (1982).

HISTORY

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15379. Public Agency.

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21063, Public Resources Code.

§ 15380. Rare or Endangered Species.

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be rare or endangered as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Administrative Code; or

(2) Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subsection (c) shall nevertheless be considered to be rare or endangered if the species can be shown to meet the criteria in subsection (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21001(c), Public Resources Code; and Sections 1900–1913 and 2050–2055, Fish and Game Code.

§ 15381. Responsible Agency.

"Responsible agency" means a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2 and 21167.3, Public Resources Code.

§ 15382. Significant Effect on the Environment.

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21068, 21083, 21100 and 21151, Public Resources Code; *Heclon v. People of the State of California*, 58 Cal. App. 3d 653.

HISTORY

1. On November 23, 1986 the regulation (Title 14, § 895.1) became effective which clarifies the Board's regulatory interpretation of "effect" and "impact" as specified in CEQA (Public Resources Code § 21068 and § 21080.5(d)(2) and (3)) (Register 86, No. 4).

§ 15383. State Agency.

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15384. Substantial Evidence.

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.

(b) This definition is intended to be informative and does not constitute a change in, but is merely reflective of, existing law.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21168 and 21168.5, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68; *Running Fence Corp.* v. *Superior Court* (1975) 51 Cal. App. 3d 400; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15385. Tiering.

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR.

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15386. Trustee Agency.

"Trustee agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee agencies include: (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserves System.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3 and 21080.4, Public Resources Code.

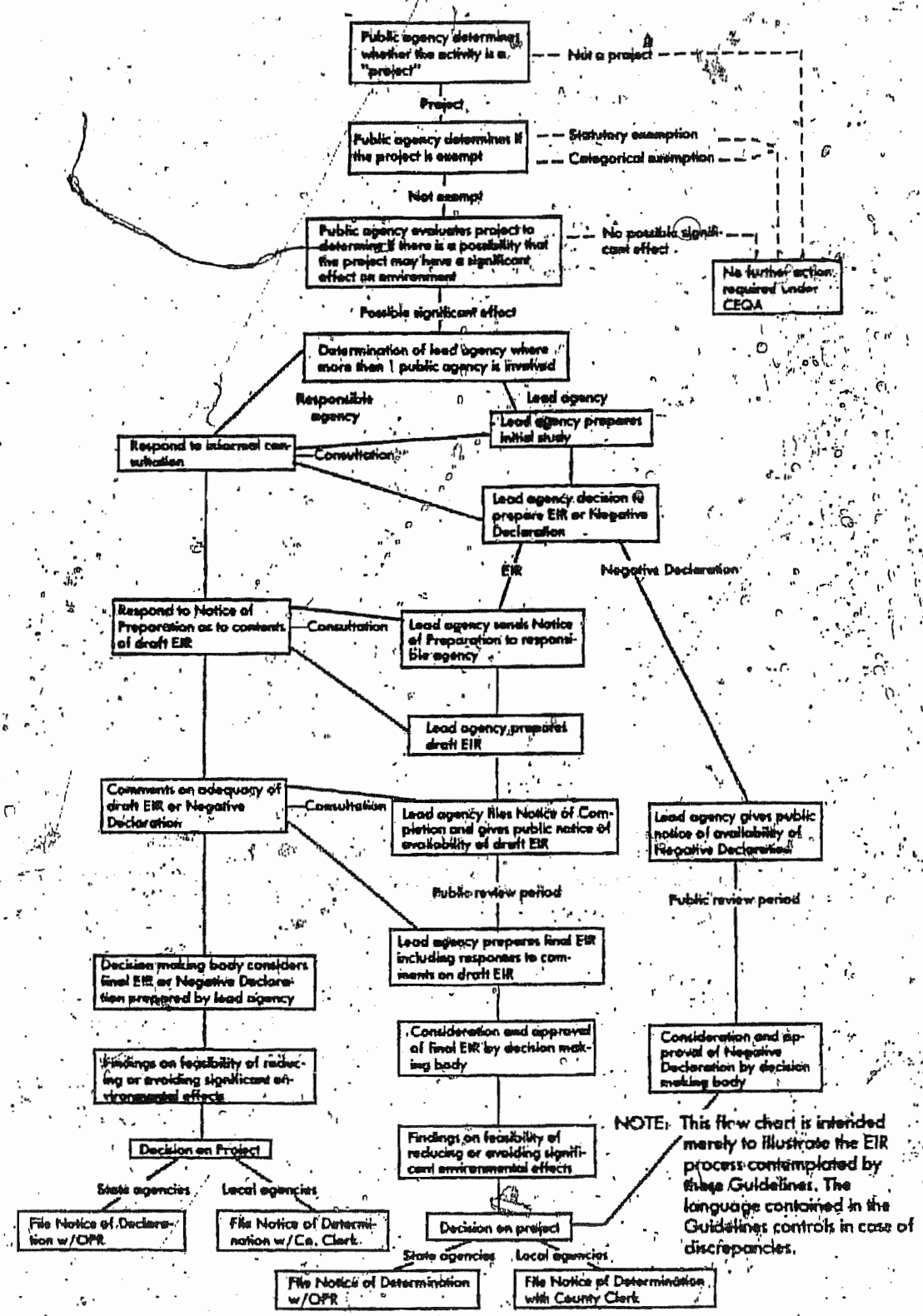
§ 15387. Urbanized Area.

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A lead agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301-3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.7, 21083 and 21084, Public Resources Code.

Appendix A

CEQA PROCESS FLOW CHART



NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Amendment of Appendix A filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5). For prior history, see Registers 80, No. 19 and 73, No. 50.

Appendix I

ENVIRONMENTAL CHECKLIST FORM

1. Project Title:

2. Lead Agency Name and Address:

3. Contact Person and Phone Number:

4. Project Location:

5. Project Sponsor's Name and Address:

6. General Plan Designation: 7. Zoning:

8. Description of Project: (Describe the whole action involved, including but not limited to later 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)

10. Other public agencies whose approval is required
(e.g., permits, financing approval, or participation agreement.)

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

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

☐ Land Use and Planning	☐ Transportation/Circulation	☐ Public Services
☐ Population and Housing	☐ Biological Resources	☐ Utilities and Service Systems
☐ Geological Problems	☐ Energy and Mineral Resources	☐ Aesthetics
☐ Water	☐ Hazards	☐ Cultural Resources
☐ Air Quality	☐ Noise	☐ Recreation
	☐ Mandatory Findings of Significance	

DETERMINATION.

(To be completed by the Lead Agency.)

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared. ☐

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION will be prepared. ☐

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required. ☐

I find that the proposed project MAY have a significant effect(s) on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed. ☐

I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project. ☐

Signature _____ Date _____

Printed Name _____ For _____

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project–specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project–specific screening analysis).
2) 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.
3) "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect is significant If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4) "Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analysis," may be cross–referenced).
5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). Earlier analyses are discussed in Section XVII at the end of the checklist.
6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated. See the sample question below. A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
7) This is only a suggested form, and lead agencies are free to use different ones.

SAMPLE QUESTION:

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Would the proposal result in potential impacts involving:				
Landslides or mudslides? (1, 6)	☐	☐	☐	☐
(Attached source list explains that is the general plan, and 6 is a USGS topo map. This answer would probably not need further explanation.)				
I. LAND USE AND PLANNING. Would the proposal:				
a) Conflict with general plan designation or zoning? (source #(s):)	☐	☐	☐	☐
b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project? ( )	☐	☐	☐	☐
c) Be incompatible with existing land use in the vicinity? ( )	☐	☐	☐	☐
d) Affect agricultural resources or operations (e.g., impacts to soils or farmlands, or impacts from incompatible land uses)? ( )	☐	☐	☐	☐
e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)? ( )	☐	☐	☐	☐
II. POPULATION AND HOUSING. Would the proposal:				
a) Cumulatively exceed official regional or local population projections? ( )	☐	☐	☐	☐
b) Induce substantial growth in an area either directly or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)? ( )	☐	☐	☐	☐
c) Displace existing housing, especially affordable housing? ( )	☐	☐	☐	☐

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
III. GEOLOGIC PROBLEMS. Would the proposal result in or expose people to potential impacts involving:				
a) Fault rupture? ( )	☐	☐	☐	☐
b) Seismic ground shaking ( )	☐	☐	☐	☐
c) Seismic ground failure, including liquefaction? ( )	☐	☐	☐	☐
d) Seiche, tsunami, or volcanic hazard? ( )	☐	☐	☐	☐
e) Landslides or mudflows? ( )	☐	☐	☐	☐
f) Erosion, changes in topography or unstable soil conditions from excavation, grading, or fill? ( )	☐	☐	☐	☐
g) Subsidence of the land? ( )	☐	☐	☐	☐
h) Expansive soils? ( )				
i) Unique geologic or physical features? ( )	☐	☐	☐	☐
IV. WATER. Would the proposal result in:				
a) Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff? ( )	☐	☐	☐	☐
b) Exposure of people or property to water related hazards such as flooding? ( )	☐	☐	☐	☐
c) Discharge into surface waters or other alteration of surface water quality (e.g. temperature, dissolved oxygen or turbidity)? ( )	☐	☐	☐	☐
d) Changes in the amount of surface water in any water body? ( )	☐	☐	☐	☐
e) Changes in currents, or the course or direction of water movements? ( )	☐	☐	☐	☐
f) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations or through substantial loss of groundwater recharge capability? ( )	☐	☐	☐	☐
g) Altered direction or rate of flow of groundwater? ( )	☐	☐	☐	☐
h) Impacts to groundwater quality? ( )	☐	☐	☐	☐
i) Substantial reduction in the amount of groundwater otherwise available for public water supplies? ( )	☐	☐	☐	☐

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
V. AIR QUALITY. Would the proposal:				
a) Violate any air quality standard or contribute to an existing or projected air quality violation? ( )	☐	☐	☐	☐
b) Expose sensitive receptors to pollutants? ( )	☐	☐	☐	☐
c) Alter air movement, moisture, or temperature, or cause any change in climate? ( )	☐	☐	☐	☐
d) Create objectionble odors? ( )	☐	☐	☐	☐
VI. TRANSPORTATION/CIRCULATION. Would the proposal result in:	☐			
a) Increased vehicle trips or traffic congestion? ( )	☐	☐	☐	☐
b) Hazards to safety from design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? ( )	☐	☐	☐	☐
c) Inadequate emergency access or access to nearby uses? ( )	☐	☐	☐	☐
d) Insufficient parking capacity on-site or off-site? ( )	☐	☐	☐	☐
e) Hazards or barriers for pedestrians or bicyclists? ( )	☐	☐	☐	☐
f) Conflicts with adopted policies supporting transportation (e.g. bus turnouts, bicycle racks)? ( )	☐	☐	☐	☐
g) Rail, waterborne or air traffic impacts? ( )	☐	☐	☐	☐
VII. BIOLOGICAL RESOURCES. Would the proposal result in impacts to:				
a) Endangered, threatened or rare species or their habitats (including but not limited to plants, fish, insects, animals, and birds)? ( )	☐	☐	☐	☐
b) Locally designated species (e.g. heritage trees)? ( )	☐	☐	☐	☐
c) Locally designated natural communities (e.g. oak forest, coastal habitat, etc.)? ( )	☐	☐	☐	☐
d) Wetland habitat (e.g. marsh, riparian and vernal pool)? ( )	☐	☐	☐	☐
e) Wildlife dispersal or migration corridors? ( )	☐	☐	☐	☐

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. ENERGY AND MINERAL RESOURCES. Would the proposal:				
a) Conflict with adopted energy conservation plans? ( )	☐	☐	☐	☐
b) Use non-renewable resources in a wasteful and inefficient manner? ( )	☐	☐	☐	☐
c) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State? ( )	☐	☐	☐	☐
IX. HAZARDS. Would the proposal involve:				
a) A risk of accidental explosion or release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation)? ( )	☐	☐	☐	☐
b) Possible interference with an emergency response plan or emergency evacuation plan? ( )	☐	☐	☐	☐
c) The creation of any health hazard or potential health hazard? ( )	☐	☐	☐	☐
d) Exposure of people to existing sources of potential health hazards? ( )	☐	☐	☐	☐
e) Increased fire hazard in areas with flammable brush, grass, or trees? ( )	☐	☐	☐	☐
X. NOISE. Would the proposal result in:				
a) Increases in existing noise levels? ( )	☐	☐	☐	☐
b) Exposure of people to severe noise levels? ( )	☐	☐	☐	☐
XI. PUBLIC SERVICES. Would the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:				
a) Fire protection? ( )	☐	☐	☐	☐
b) Police protection? ( )	☐	☐	☐	☐
c) Schools? ( )	☐	☐	☐	☐
d) Maintenance of public facilities, including roads? ( )	☐	☐	☐	☐
e) Other governmental services? ( )	☐	☐	☐	☐

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. UTILITIES AND SERVICE SYSTEMS. Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities:				
a) Power or natural gas? ( )	☐	☐	☐	☐
b) Communications systems? ( )	☐	☐	☐	☐
c) Local or regional water treatment or distribution facilities? ( )	☐	☐	☐	☐
d) Sewer or septic tanks? ( )	☐	☐	☐	☐
e) Storm water drainage? ( )	☐	☐	☐	☐
f) Solid waste disposal? ( )	☐	☐	☐	☐
g) Local or regional water supplies? ( )	☐	☐	☐	☐
XIII. AESTHETICS. Would the proposal:				
a) Affect a scenic vista or scenic highway? ( )	☐	☐	☐	☐
b) Have a demonstrable negative aesthetic effect? ( )	☐	☐	☐	☐
c) Create light or glare? ( )	☐	☐	☐	☐
XIV. CULTURAL RESOURCES. Would the proposal:				
a) Disturb paleontological resources? ( )	☐	☐	☐	☐
b) Disturb archaeological resources? ( )	☐	☐	☐	☐
c) Affect historical resources? ( )	☐	☐	☐	☐
d) Have the potential to cause a physical change which would affect unique ethnic cultural values? ( )	☐	☐	☐	☐
e) Restrict existing religious or sacred uses within the potential impact area? ( )	☐	☐	☐	☐
XV. RECREATION. Would the proposal:				
a) Increases the demand for neighborhood or regional parks or other recreational facilities? ( )	☐	☐	☐	☐
b) Affect existing recreational opportunities? ( )	☐	☐	☐	☐

Issues (and Supporting Information Sources):	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI. MANDATORY FINDINGS OF SIGNIFICANCE.				
a) Does the project have the potential to 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, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?	☐	☐	☐	☐
c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)	☐	☐	☐	☐
d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

XVII. EARLIER ANALYSES.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

a) Earlier analyses used. Identify earlier analyses and state where they are available for review.

b) Impacts adequately addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation measures. For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 21094 and 21151, Public Resources Code; *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296 (1988); *Leonoff v. Monterey Board of Supervisors*, 222 Cal.App.3d 1337 (1990).

HISTORY

1. Repealer and new Appendix I filed 8-19-94; operative 9-19-94 (Register 94, No. 33). For prior history, see Register 80, No. 19.

[The next page is 711.]

§ 15062
§ 15064
§ 15065
§ 15070
§ 15072
§ 15073
§ 15074
§ 15074.1
§ 15075
§ 15081.5
§ 15087
§ 15090
§ 15091
§ 15093
§ 15094
§ 15126
§ 15130
§ 15176
§ 15177
§ 15178
§ 15179
§ 15206
§ 15225

§ 15041. Authority to Mitigate.

Within the limitations described in Section 15040, (a) A lead agency for a project has authority to require changes in any or all activities involved in the project in order to lessen or avoid significant effects on the environment.

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi*, 83 Cal. App. 3d 707.

§ 15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County*, 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill*, 121 Cal. App. 3d 203.

§ 15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill*, (1981) 121 Cal. App. 3d 203.

§ 15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15045. Fees.

(a) All lead agencies preparing EIRs and negative declarations for projects to be carried out by any person or entity other than the lead agency itself may charge and collect a reasonable fee from such person or entity, in order to recover the estimated costs incurred in preparing the EIR or negative declaration.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code; and Sections 6250 et seq., Government Code.

Article 4. Lead Agency

§ 15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving ompleted request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes ay be found in Title 14, California Administrative Code, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15052 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Administrative Code, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

§ 15060. Preliminary Review.

(a) A public agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project.

(c) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency still focus the EIR on the significant effects of the project and indibriefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

HISTORY

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15061. Review for Exemption.

(a) As part of the preliminary review, a public agency shall determine whether a particular activity is exempt from CEQA.

(b) Possible exemptions from CEQA include:

(1) The activity is not a project as defined in Section 15378.

(2) The project has been granted an exemption by statute (see Article 18, commencing with Section 15260) or by categorical exemption (see Article 19, commencing with Section 15300).

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles*, 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an initial study or a similar analysis prepared pursuant to the National Environmental Policy Act.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant.

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should

be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Some examples of physical changes which may be deemed to be a significant effect on the environment are contained in Appendix G.

(f) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(g) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(h) After application of the principles set forth above in Section 15064(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(i) If an air emission or water discharge meets the existing standard for a particular pollutant, the lead agency may presume that the emission or discharge of the pollutant will not be a significant effect on the environment. If other information is presented suggesting that the emission or discharge may cause a significant effect, the lead agency shall evaluate the effect and decide whether it may be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21064, 21064.5, 21080(c) and 21082.1, Public Resources Code; *Friends of B Street v. City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp. v. Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060-15069.8) and new Article 6 (Sections 15070-15075) filed 7-13-83; designated effective 8-1-83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).
3. Amendment of section heading, section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subsection (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions de-

veloped under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6 and 21151.8, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as ng as the review period established by the State Clearinghouse.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091 and 21092.5, Public Resources Code; *Plaggmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommenda- n.

(b) Prior to approving a project, the decisionmaking body of the lead ency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1 and 21096, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(f), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.

(a) After deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved, the lead agency shall file a notice of determination. For projects with phases, the lead agency shall file a notice of determination after deciding to carry out or approve each phase.

(b) The notice of determination must include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with OPR.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires a discretionary approval from any state agency, the local lead agency shall also file with OPR.

(e) All notices filed pursuant to this section shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt. Each notice shall remain posted for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than 9 months. The filing of the notice of determination and the posting on a list of such notices starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15081.5. EIRs Required by Statute.

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse–derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subsection (1) of the subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off–site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manges hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap–leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University,

University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.09, 21083.8, 21083.8.1, 21151.1 and 21151.7, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15′ or 7 1/2′ topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

§ 15083.5. City or County Consultation with Water Agencies.

This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.

(a) This guideline shall apply only to projects which meet all of the following criteria:

(1) The project consists of any of the following activities for which an application has been submitted to a city or county:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.

(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.

(D) A hotel, motel or both with more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park intended to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) Any mixed–use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500–dwelling unit project.

(2) As part of approval of the project, any of the following are required:

(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subsection (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single–dry, and multiple–dry water years as included in the 20–year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21151.9, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Other state, federal, and local agencies which exercise authority over resources which may be affected by the project.

(b) The lead agency may consult directly with any person who has special expertise with respect to any environmental impact involved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. This notice shall be given as provided under Section 15105. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper

of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information required by the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the Clearinghouse.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21153 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
3. Amendment of section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary* v. *County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

§ 15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition* v. *Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

§ 15090. Certification of the Final EIR.

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non–elected decision–making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision–making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082.1, 21100 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.

(d) When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council*, 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus*, 118 Cal. App. 3d 348.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision–making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091(a)(2) or (a)(3).

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975); *City of Carmel–by–the–Sea* v. *Board of Supervisors* 71 Cal. App. 3d 84 (1977).

would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix L and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision-making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision-making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of Kern*, 39 Cal. App. 3d 830.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration.

With a private project, the negative declaration must be completed and ready for approval within 105 days from the date when the lead agency accepted the application as complete. The negative declaration may be approved at a later time when the permit or other entitlement is approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

History

1. Amendment of subsections (a) and (b) and amendment of Note filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) A notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for period of at least 30 days. Thereafter, the clerk shall return the notice the local lead agency with a notation of the period during which it was osted. The local lead agency shall retain the notice for not less than 9 months.

(e) A notice of determination filed with OPR is available for public inspection and shall be posted for a period of at least 30 days.

(f) The filing of the notice of determination and the posting of such notice starts a 30–day statute of limitations on court challenges to the approval under CEQA.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

History

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection relettering, and amendment of newly designated subsection (f) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR each responsible agency.

te: Authority cited: Sections 21083 and 21087, Public Resources Code. Refere: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that

distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100 and 21105, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision–making, and

(B) A list of the approvals for which the EIR will be used.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles*, 71 Cal. App. 3d 185 (1977).

§ 15125. Environmental Setting.

An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective. The description shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(a) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.

(b) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable Air Quality Management Plan (or State Implementation Plan once adopted), area–wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(c) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350.

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The following subjects shall be discussed, preferably in separate sections or paragraphs. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short–term and long–term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR-EIS or combined negative declaration-finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950-65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91-190 as amended, 42 U.S.C.A. 4321-4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action within 50 days on a tentative subdivision map for which an EIR is being or will be prepared pursuant to Article 2 (commencing with Section 66452) of Chapter 3, Division 2, Title 2 of the Government Code, but a negative declaration for a subdivision map must be completed within the 50 day period (see Government Code Section 66452.1(c)),

(2) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(3) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(4) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the application shall be made within one year from the date on which an application requesting approval of such project has been received and accepted as complete for CEQA processing by such agency. This one-year time limit may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.*, 59 Cal. App. 3d 959 (1976).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into

(b) Any Significant Environmental Effects Which Cannot be Avoided if the Proposal is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Mitigation Measures Proposed to Minimize the Significant Effects. Describe measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy. The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR. Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified if one has been selected. Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale*, 125 Cal. App. 3d 986).

(d) Alternatives to the Proposed Action. Describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.

(1) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(2) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record.

(3) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles*, 124 Cal.App.3d 1.)

(4) "No project" alternative. The specific alternative of "no project" shall also be evaluated along with its impact. The "no project" analysis shall discuss the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(5) Rule of reason. The range of alternatives required in an EIR is governed by "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(A) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood*, (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(B) Alternative locations.

1. Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

2. None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

3. Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d 553, 573).

(C) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App. 3d 274).

(e) Any Significant Irreversible Environmental Changes Which Would Be Involved in the Proposed Action Should It Be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(f) The Growth-Inducing Impact of the Proposed Action. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may further tax existing community service facilities so consideration must be given to this impact. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the

environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)–(4), amendment of subsection (d)(5), new subsections (d)(5)(A)–(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (e), subsection relettering, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126(e) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Discussion of Cumulative Impacts.

(a) Cumulative impacts shall be discussed when they are significant.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness. The following elements are necessary to an adequate discussion of cumulative impacts:

(1) Either:

(A) A list of past, present, and reasonably anticipated future projects producing related or cumulative impacts, including those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or area-wide conditions. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project–by–project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b) and 21100, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the

public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) Agencies are encouraged to tier EIRs which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the EIR on the actual issues ripe for decision at each level of environmental review.

(b) Where an EIR has been prepared for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR on the project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(c) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project would be located.

(d) The initial study shall be used to decide whether and to what extent the prior EIR is still sufficient for the present project.

(e) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR should state that the lead agency is using the tiering concept and that the EIR is being tiered with the earlier EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

§ 15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21096, Public Resources Code.

History

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

History

1. New Article 11 (Section 15180) filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160–15170) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) If the project was approved prior to the occurrence of the conditions described in Subsection (a), the subsequent EIR or negative declaration shall be prepared by the public agency which grants the next discretionary approval for the project. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986); and *Benton v. Board of Supervisors*, 226 Cal.App.3d 1467 (1991).

History

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision–making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision–making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986); and *Benton v. Board of Supervisors*, 226 Cal.App.3d 1467 (1991).

History

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one

project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

§ 15167. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren–Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case–by–case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795 (1973).

§ 15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment

is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15170. Joint EIR–EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5. Master Environmental Impact Report

§ 15175. Master EIR.

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21156, 21157 and 21089, Public Resources Code.

HISTORY

1. New article 11.5 (sections 15175–15175.5) and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15176. Contents of a Master EIR.

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office–commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126, subdivision (d)(5), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of

subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

(c) A description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel–specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15177. Subsequent Projects Within the Scope of the MEIR.

(a) After a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subsection (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project–specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21157, 21157.6 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15178. Subsequent Projects Identified in the MEIR.

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project–specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a

project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179. Limitations on the Use of the Master EIR.

The certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

HISTORY

New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179.5. Focused EIRs and Small Projects.

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed–use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one–half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated through the preparation of a subsequent environmental impact report or supplemental environmental impact report.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21158.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 12. Special Situations

§ 15180. Redevelopment Projects.

(a) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY

1. New Article 12 (Sections 15190–15192) filed 1–6–76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4–2–76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7–13–83; effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined.

This examination of the previously prepared EIR shall include a further, specific finding as to:

1. Whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

§ 15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

§ 15183. Residential Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) In approving a residential project meeting the requirements of this section, a public agency shall limit its examination of environmental effects under CEQA to effects which:

(1) Are peculiar to the project or the parcel on which the project would be located, although the effect may occur on or off the site of the project, and

(2) Were not analyzed as significant effects in a prior EIR on the zoning, general plan or community plan with which the residential project is consistent.

(b) This section shall apply only to residential projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan or zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of residential development, or

(B) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action or the general plan.

(c) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(d) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects. The finding shall be based on substantial evidence which need not include an EIR. Examples of uniformly applied development policies or standards include:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(e) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(f) Where a community plan meets the requirements of this section, any rezoning action consistent with the community plan shall be treated as a residential project subject to this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

§ 15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

§ 15187. Environmental Review of New Rules and Regulations.

(a) At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21159 and 21159.4, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15188. Focused EIR for Pollution Control Equipment.

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

(1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

(2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

(3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project–specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth–inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15189. Compliance with Performance Standard or Treatment Requirement Rule or Regulation.

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project–specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.2, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15190. Deadlines for Compliance with Sections 15188 and 15189.

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.3, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 13. Review and Evaluation of EIRs and Negative Declarations

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

History
1. New Article 13 (Sections 15201–15203) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

§ 15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

§ 15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, people should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects.

(b) In reviewing negative declarations, people should focus on the proposed finding that the project will not have a significant effect on the environment. If people believe that the project would have a significant effect, they should:

(1) Identify the effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and whenever possible, should submit data or references in support of the comments.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary.

(e) This section shall not be used to restrict the ability of reviewers to comment on broader issues and on the general adequacy of a document or to reject comments not focused as recommended by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code. Formerly Section 15161.

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) The number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083, 21104 and 21153, Public Resources Code. Formerly Section 15161.5.

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance. A draft EIR or negative declaration prepared by any public agency on a project described in this

the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

§ 15223. Consultation with Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

§ 15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

§ 15225. Circulation of Documents.

(a) Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.8 and 21092, Public Resources Code.

HISTORY

1. New subsection (a) designator, new subsections (b)–(b)(2), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes.

(b) Joint environmental research and studies.

(c) Joint public hearings.

(d) Joint environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

§ 15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21101, Public Resources Code.

§ 15228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

§ 15229. Baseline Analysis for Military Base Reuse Plan EIRs.

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 74663 of the Government Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento–San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference. Section 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (b)(5) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

§ 15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

§ 15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

§ 15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

HISTORY

1. New Article 14 (Sections 15220–15228) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

§ 15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR–EIS or negative declaration–finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project,

Article 16. EIR Monitor

§ 15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

SECRETARY FOR RESOURCES
ATTENTION: CALIFORNIA EIR MONITOR
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21088, Public Resources Code.

HISTORY

1. New Article 16 (Section 15240) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 17. Exemption for Certified State Regulatory Programs

§ 15250. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New Article 17 (Sections 15250–15253) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg–Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer–Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Food and Agriculture and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The regulations of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

(k) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren–Alquist Act, commencing with Public Resources Code Section 25500.

(l) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(m) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(n) The program of the Delta Protection Commission involving the preparation and adoption of a Resource Management Plan for the Sacramento–San Joaquin Delta (Pub. Resources Code § 29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code § 29763.5).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New subsection (m) filed 3–1–89; operative 3–31–89 (Register 89, No. 10).
2. New subsection (n) filed 11–9–94; operative 12–9–94 (Register 94, No. 45).

§ 15252. Substitute Document.

The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(a) A description of the proposed activity, and

(b) Either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate-income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no-project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter-Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.1, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 15. Litigation

§ 15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY

1. New Article 15 (Sections 15230-15233) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15231. Adequacy of EIR or Negative Declaration for Use by Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

§ 15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

§ 15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for non-compliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

§ 15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long–range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long–range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal programs and long–range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

§ 15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

§ 15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

§ 15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case–by–case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

§ 15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code.

(b) Emergency repairs to public service facilities necessary to maintain service.

(c) Specific actions necessary to prevent or mitigate an emergency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4) and 21172, Public Resources Code.

§ 15270. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation f the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

§ 15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

§ 15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

§ 15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3) Meeting financial reserve needs and requirements,

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in Subsection (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in Subsection (b). Where a certified agency does not meet the criteria in Subsection (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

Article 18. Statutory Exemptions

§ 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY

1. New Article 18 (Sections 15260–15277) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on–going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo v. Yorty*, 32 Cal. App. 3d 795.

§ 15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

§ 15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 13389, Water Code.

§ 15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 51119, Government Code.

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

§ 15274. Family Day Care Homes.

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in-home care for up to twelve children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in-home care for up to six children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail es or high-occupancy vehicle lanes already in use, including the modnization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

§ 15276. State and Regional Transportation Improvement Programs.

CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(14), Public Resources Code.

§ 15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

15278. Application of Coatings.

(a) CEQA does not apply to a discretionary decision by an air quality anagement district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Chapter 1131, Statutes of 1993, Section 1.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15279. Housing for Agricultural Employees.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined below, provided the development is either:

(1) Affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, there is no public financial assistance for the development project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower-income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, there is public financial assistance for the project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to low and moderate-income households for a period of at least 15 years.

(b) The development must also meet all the following criteria:

(1) It is consistent with the applicable city, county, or city and county general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning, as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) If the project is proposed in an urbanized area, it does not exceed 45 dwelling units, or if it consists of dormitories, barracks or other group living facilities houses not more than 45 agricultural employees, and its

site is adjacent on at least two sides to land that has been previously developed.

(4) If the project is proposed in a nonurbanized area, its site is zoned for general agricultural use and the project consists of not more than 20 dwelling units or, if it consists of dormitories, barracks or other group living facilities, it houses not more than 20 agricultural employees.

(5) Its site is not more than five acres in area, except that a project located in an area with a population density of at least 1000 persons per square mile shall not be more than two acres in area.

(6) Its site is, or can be, adequately served by utilities.

(7) Its site has no value as wildlife habitat.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962 of the Government Code.

(9) It will not involve the demolition of, or any substantial adverse change in, any structure that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(c) As used in this section, "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(d) As used in this section, "urbanized area" means either of the following:

(1) an area with a population density of at least 1000 persons per square mile; or

(2) an area with a population density of less than 1000 persons per square mile that is identified as an urban area in the general plan adopted by the applicable city, county, or city and county and was not designated at the time the application was deemed complete as an area reserved for future urban growth.

(e) This section does not apply if the public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15280. Lower-Income Housing Projects.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area, provided that it is either:

(1) Affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(b) The development must also meet all the following criteria:

(1) It is consistent with the local jurisdiction's general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) Its site has been previously developed or is currently developed with urban uses, or the immediately contiguous properties surrounding the site are or have been previously developed with urban uses.

(4) Its site is not more than two acres in area.

(5) Its site is, or can be, adequately served by utilities.

(6) Its site has no value as wildlife habitat.

(7) It will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962.5 of the Government Code, and the site has been subject to an assessment by a California registered environmental assessor to determine both the presence of hazardous contaminants, if any, and the potential for exposure of site occupants to significant health hazards from nearby properties and activities.

(c) For purposes of this section, "urbanized area" means an area that has a population density of at least 1000 persons per square mile.

(d) If hazardous contaminants are found on the site, they must be removed or any significant effects mitigated to a level of insignificance in order to apply this exemption. If a potential for exposure to significant health hazards from nearby properties and activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance in order to apply this exemption. Any removal or mitigation to insignificance must be completed prior to any residential occupancy of the project.

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.14, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15281. Air Quality Permits.

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.24, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subsection summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The construction of housing or neighborhood commercial facilities in an urbanized area pursuant to the provisions of Section 21080.7 of the Public Resources Code.

(f) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(g) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(h) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(i) The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(j) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(k) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(l) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(m) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code § 29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(n) Minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(o) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 the Public Resources Code.

) The acquisition of land by the Department of Transportation if ved or acquired within a statewide or regional priority corridor desigted pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(q) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(r) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(s) Determinations made regarding a city or countys regional housing needs as set forth in Section 65584 of the Government Code.

(t) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(u) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(v) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(w) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735 and 44203(g), Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 19. Categorical Exemptions

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant—for example, annual additions to an existing building under Class 1.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code; *Wildlife Alive* v. *Chickering* (1977) 18 Cal. 3d 190.

§ 15300.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Some examples of physical changes which may be deemed to be a significant effect on the environment are contained in Appendix G.

(f) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(g) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(h) After application of the principles set forth above in Section 15064(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(i)(1)(A) Except as otherwise required by Section 15065, a change in the environment is not a significant effect if the change complies with a standard that meets the definition in subsection (i)(3).

(B) If there is a conflict between standards, the lead agency shall determine which standard is appropriate for purposes of this subsection based upon substantial evidence in light of the whole record.

(C) Notwithstanding subsection (i)(1)(A), if the lead agency determines on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an initial study or a similar analysis prepared pursuant to the National Environmental Policy Act.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices H and I. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should

(2) In the absence of a standard that satisfies subsection (i)(1)(a), the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(3) For the purposes of this subsection a "standard" means a standard of general application that is all of the following:

(A) a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(B) adopted for the purpose of environmental protection;

(C) adopted by a public agency through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency;

(D) one that governs the same environmental effect which the change in the environment is impacting; and,

(E) one that governs within the jurisdiction where the project is located.

(4) This definition includes thresholds of significance adopted by lead agencies which meet the requirements of this subsection.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

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Angeles, 13 Cal. 3d 68 (1974); *Running Fence Corp.* v. *Superior Court*, 15 Cal. App. 3d 400 (1975).

History

1. New section filed 5–8–80; effective thirtieth day thereafter (Register 80, No. 19).
2. Amendment filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15003. Policies.

In addition to the policies declared by the Legislature concerning environmental protection and administration of CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have declared the following policies to be implicit in CEQA:

(a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)

(c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 C. 3d 68.)

(d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d 495.)

(e) The EIR process will enable the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day should a majority of the voters disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)

(f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247.)

(g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263)

(h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151)

(i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692)

(j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. (*Laurel Heights Improvement Assoc. v. Regents of U.C.* (1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553)

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).
4. New subsections (g)–(j) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

5004. Time of Preparation.

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Mount Sutro Defense Committee* v. *Regents of the University of California*, (1978) 77 Cal. App. 3d 20.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsections (b)(2)–(b)(2)(B), subsection renumbering, amendment of subsection (c), and amendment of Note filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15005. Terminology.

The following words are used to indicate whether a particular subject in the Guidelines is mandatory, advisory, or permissive:

(a) "Must" or "shall" identifies a mandatory element which all public agencies are required to follow.

(b) "Should" identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations.

(c) "May" identifies a permissive element which is left fully to the discretion of the public agencies involved.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

History

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 75, No. 1.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Editorial correction of 7–13–83 order filed 7–26–83 (Register 83, No. 33).

§ 15006. Reducing Delay and Paperwork.

Public agencies should reduce delay and paperwork by:

(a) Integrating the CEQA process into early planning. (15004(c))

(b) Ensuring the swift and fair resolution of lead agency disputes. (15053)

(c) Identifying projects which fit within categorical exemptions and are therefore exempt from CEQA processing. (15300.4)

(d) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs. (15063)

(e) Using a negative declaration when a project not otherwise exempt will not have a significant effect on the environment. (15070)

(f) Using a previously prepared EIR when it adequately addresses the proposed project. (15153)

(g) Consulting with state and local responsible agencies before and during preparation of an environmental impact report so that the document will meet the needs of all the agencies which will use it. (15083)

(h) Urging applicants, either before or after the filing of an application, to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a negative declaration rather than an environmental impact report. (15063(c)(2))

(i) Integrating CEQA requirements with other environmental review and consulting requirements. (Public Resources Code Section 21080.5)

(j) Eliminating duplication with federal procedures by providing for joint preparation of environmental documents with federal agencies and by adopting completed federal NEPA documents. (15227)

(k) Emphasizing consultation before an environmental impact report is prepared, rather than submitting adversary comments on a completed document. (15082(b))

(l) Combining environmental documents with other documents such as general plans. (15166)

(m) Eliminating repetitive discussions of the same issues by using environmental impact reports on programs, policies, or plans and tiering from reports of broad scope to those of narrower scope. (15152)

(n) Reducing the length of environmental impact reports by means such as setting appropriate page limits. (15141)

(o) Preparing analytic rather than encyclopedic environmental impact reports. (15142)

(p) Mentioning only briefly issues other than significant ones in EIRs. (15143)

(q) Writing environmental impact reports in plain language. (15140)

(r) Following a clear format for environmental impact reports. (15120)

(s) Emphasizing the portions of the environmental impact report that are useful to decision–makers and the public and reducing emphasis on background material. (15143)

(t) Using incorporation by reference. (15150)

(u) Making comments on environmental impact reports as specific as possible. (15204)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21083, Public Resources Code.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For history of former section, see Register 80, No. 19.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Amendment of subsections (g), (m) and (u) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15007. Amendments.

(a) These guidelines will be amended from time to time to match new developments relating to CEQA.

(b) Amendments to the guidelines apply prospectively only. New requirements in amendments will apply to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments.

(c) If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content requirements in guideline amendments taking effect before the document is finally approved.

(d) Public agencies shall comply with new requirements in amendments to the guidelines beginning with the earlier of the following two dates:

(1) The effective date of the agency's procedures amended to conform to the new guideline amendments; or

(2) The 120th day after the effective date of the guideline amendments.

(e) Public agencies may implement any permissive or advisory elements of the guidelines beginning with the effective date of the guideline amendments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21087, Public Resources Code; *Stevens* v. *City of Glendale*, 125 Cal. App. 3d 986.

HISTORY

1. New section filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 2. General Responsibilities

§ 15020. General.

Each public agency is responsible for complying with CEQA and these Guidelines. A public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the lead agency to accomplish. For example, a lead agency is responsible for the adequacy of its environmental documents. The lead agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21082.1, Public Resources Code; *Russian Hill Improvement Association* v. *Board of Permit Appeals*, 44 Cal. App. 3d 158 (1975).

HISTORY

1. Repealer of Article 2 (Sections 15005 and 15006) and new Article 2 (Sections 15020–15025) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 75, No. 1; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives.

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the

agency decides to approve a project that will cause one or more significant effects on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15022. Public Agency Implementing Procedures.

(a) Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures should contain at least provisions for:

(1) Identifying the activities that are exempt from CEQA. These procedures should contain:

(A) Provisions for evaluating a proposed activity to determine if there is no possibility that the activity may have a significant effect on the environment.

(B) A list of projects or permits over which the public agency has only ministerial authority.

(C) A list of specific activities which the public agency has found to be within the categorical exemptions established by these guidelines.

(2) Conducting initial studies.

(3) Preparing negative declarations.

(4) Preparing draft and final EIRs.

(5) Consulting with and obtaining comments from other public agencies and members of the public with regard to the environmental effects of projects.

(6) Assuring adequate opportunity and time for public review and comment on the Draft EIR or Negative Declaration.

(7) Evaluating and responding to comments received on environmental documents.

(8) Assigning responsibility for determining the adequacy of an EIR or negative declaration.

(9) Reviewing and considering environmental documents by the person or decision making body who will approve or disapprove a project.

(10) Filing documents required or authorized by CEQA and these Guidelines.

(11) Providing adequate comments on environmental documents which are submitted to the public agency for review.

(12) Assigning responsibility for specific functions to particular units of the public agency.

(13) Providing time periods for performing functions under CEQA.

(b) Any district, including a school district, need not adopt objectives, criteria, and procedures of its own if it uses the objectives, criteria, and procedures of another public agency whose boundaries are coterminous with or entirely encompass the district.

(c) Public agencies should revise their implementing procedures to conform to amendments to these guidelines within 120 days after the effective date of the amendments. During the period while the public agency is revising its procedures, the agency must conform to any statutory changes in the California Environmental Quality Act that have become effective regardless of whether the public agency has revised its formally adopted procedures to conform to the statutory changes.

(d) In adopting procedures to implement CEQA, a public agency may adopt the State CEQA Guidelines through incorporation by reference. The agency may then adopt only those specific procedures or provisions described in subsection (a) which are necessary to tailor the general provisions of the guidelines to the specific operations of the agency. A public agency may also choose to adopt a complete set of procedures identifying in one document all the necessary requirements.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21100.2 and 21151.5, Public Resources Code.

§ 15023. Office of Planning and Research (OPR).

(a) From time to time OPR shall review the State CEQA Guidelines and shall make recommendations for amendments to the Secretary for Resources.

(b) OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations on the proposals to the Secretary for Resources. People making suggestions concerning categorical exemptions shall submit their recommendations to OPR with supporting information to show that the class of projects in the proposal either will or will not have a significant effect on the environment.

(c) The State Clearinghouse in the Office of Planning and Research shall be responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment.

(d) Upon request of a Lead Agency or a project applicant, OPR shall provide assistance in identifying the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project.

(e) OPR shall ensure that state responsible agencies provide the necessary information to lead agencies in response to notices of preparation within at most 30 days after receiving a notice of preparation.

(f) OPR shall resolve disputes as to which agency is the lead agency for a project.

(g) OPR shall receive and file all notices of completion, determination, and exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.4, 21083, 21086, 21087, 21108 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (e) and new subsection (g) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15024. Secretary for Resources.

(a) The Guidelines shall be adopted by the Secretary for Resources. The Secretary shall make a finding that each class of projects given a categorical exemption will not have a significant effect on the environment.

(b) The Secretary may issue amendments to these Guidelines.

(c) The Secretary shall certify state environmental regulatory programs which meet the standards for certification in Section 21080.5, Public Resources Code.

(d) The Secretary shall receive and file notices required by certified state environmental regulatory programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.5, 21083, 21084, 21086, 21087, 21088 and 21152, Public Resources Code.

HISTORY

1. Amendment filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15025. Delegation of Responsibilities.

(a) A public agency may assign specific functions to its staff to assist in administering CEQA. Functions which may be delegated include but are not limited to:

(1) Determining whether a project is exempt.

(2) Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration.

(3) Preparing a negative declaration or EIR.

(4) Determining that a negative declaration has been completed within a period of 105 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) The decisionmaking body of a public agency shall not delegate the following functions:

(1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project.

(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082, Public Resources Code; *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

§ 15040. Authority Provided by CEQA.

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, Etc., Dist. v. Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F. v. Mathews*, 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors v. City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY

1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15041. Authority to Mitigate.

Within the limitations described in Section 15040:

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District v. Muzzi* (1978) 83 Cal. App. 3d 707; and *Laurel Hills Homeowners Assn. v. City Council of City of Los Angeles* (1978) 83 Cal. App. 3d 515.

HISTORY

1. Amendment of first paragraph, subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth v. Mono County*, 8 Cal. App. 3d 247; *San Diego Trust and Savings Bank v. Friends of Gill*, 121 Cal. App. 3d 203.

§ 15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank v. Friends of Gill*, (1981) 121 Cal. App. 3d 203.

§ 15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15045. Fees.

(a) For a project to be carried out by any person or entity other than the lead agency, the lead agency may charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable under this section.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 4. Lead Agency

§ 15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project, but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes may be found in Title 14, California Administrative Code, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15052 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Administrative Code, Title 14, Sections 16000–16041.

Article 5. Preliminary Review of Projects and Conduct of Initial Study

§ 15060. Preliminary Review.

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7–13–83; effective thirtieth day thereafter (Register 83,

No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

3. New subsection (c)(3) and subsection renumbering filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings.

However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a)(2), new subsection (b)(3) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from con-

struction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1)(A) Except as otherwise required by Section 15065, a change in the environment is not a significant effect if the change complies with a standard that meets the definition in subsection (i)(3).

(B) If there is a conflict between standards, the lead agency shall determine which standard is appropriate for purposes of this subsection based upon substantial evidence in light of the whole record.

(C) Notwithstanding subsection (i)(1)(A), if the lead agency determines on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(2) In the absence of a standard that satisfies subsection (i)(1)(a), the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(3) For the purposes of this subsection a "standard" means a standard of general application that is all of the following:

(A) a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(B) adopted for the purpose of environmental protection;

(C) adopted by a public agency through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency;

(D) one that governs the same environmental effect which the change in the environment is impacting; and,

(E) one that governs within the jurisdiction where the project is located.

(4) This definition includes thresholds of significance adopted by lead agencies which meet the requirements of this subsection.

(i)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. "Probable future projects" are defined in Section 15130.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project

will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

(4) A lead agency may determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. Such de minimus incremental impacts, by themselves, do not trigger the obligation to prepare an EIR. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)–(i)(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

15064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an 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.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) 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 for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the 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.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state–owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological re-

source in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code § 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission." Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084 and 21084.1, Public Resources Code; and *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non–compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short–term environmental goals to the disadvantage of long–term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects as defined in Section 15130.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code; and *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have preared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21064, 21064.5, 21080(c) and 21082.1, Public Resources Code; *Friends of B Street v. City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp. v. Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060–15069.8) and new Article 6 (Sections 15070–15075) filed 7–13–83; designated effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subsection (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6 and 21151.8, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural re-

sources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091 and 21092.5, Public Resources Code; *Plaggmier* v. *City of San Jose*, (1980) 101 Cal. App. 3d 842.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; and *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1 and 21096, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(f), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.

(a) After deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved, the lead agency shall file a notice of determination. For projects with phases, the lead agency shall file a notice of determination after deciding to carry out approve each phase.

(b) The notice of determination must include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with OPR.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires a discretionary approval from any state agency, the local lead agency shall also file with OPR.

(e) All notices filed pursuant to this section shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt. Each notice shall remain posted for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than 9 months. The filing of the notice of determination and the posting on a list of such notices starts a 30–day statute of limitations on court challenges to the approval under CEQA.

(f) Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. ch electronic notices are in addition to the posting requirements of se guidelines and the Public Resources Code.

OTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (f) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15081.5. EIRs Required by Statute.

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse–derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subsection (1) of the subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off–site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manges hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap–leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University, University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.09, 21083.8, 21083.8.1, 21151.1 and 21151.7, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15′ or 7 1/2′ topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix J. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

§ 15083.5. City or County Consultation with Water Agencies.

This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.

(a) This guideline shall apply only to projects which meet all of the following criteria:

(1) The project consists of any of the following activities for which an application has been submitted to a city or county:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.

(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.

(D) A hotel, motel or both with more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park intended to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) Any mixed-use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500-dwelling unit project.

(2) As part of approval of the project, any of the following are required:

(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subsection (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single-dry, and multiple-dry water years as included in the 20-year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21151.9, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article 9 beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

(e) Public agencies are encouraged to make copies of notices of completion filed pursuant to this section available in electronic format on the Internet.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a) and new subsection (e) filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency, the Department of Fish and Game as to the impact of the project on the continued existence of any endangered or threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

(7) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(8) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved.

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. This notice shall be given as provided under Section 15105. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the Clearinghouse.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21153 and 21161, Public Resources Code.

History

1. Amendment of subsection (a) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

Amendment of subsection (a)(3) and Note filed 8–19–94; operative 9–19–94 (Register 94, No. 33).

3. Amendment of section and Note filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15086. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of* [illegible], (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus*, (1981) 118 Cal. [illegible] 3d 348.

15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to [illegible] EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, [illegible]e lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. Following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When the EIR is substantially revised and the entire EIR is recirculated, the lead agency may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either within the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR. The lead agency shall send directly to every agency, person, or organization that commented on the prior draft EIR a notice of the recirculation specifying that new comments must be submitted.

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

History

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. New subsections (f)–(g) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

§ 15090. Certification of the Final EIR.

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non–elected decision–making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision–making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082.1, 21100 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council* (1978) 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348; *Sierra Club* v. *Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth* v. *City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision–making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco* (1975) 48 Cal. App. 3d 584; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Sierra Club* v. *Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth* v. *City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsections (b) and (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) A notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 9 months.

(e) A notice of determination filed with OPR is available for public inspection and shall be posted for a period of at least 30 days.

(f) The filing of the notice of determination and the posting of such notice starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection relettering, and amendment of newly designated subsection (f) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either;

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

History

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15097. Mitigation Monitoring or Reporting.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan–level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan–level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

Note: Authority: Sections 21083 and 21087, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

History

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

History

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix L and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision–making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision–making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of Kern*, 39 Cal. App. 3d 830.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one–year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one–year time limit for completing and certifying a final EIR or the 105–day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR–EIS or combined negative declaration–finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR–EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950–65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both

the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C. v. Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Repealer of subsection (b)(1), subsection renumbering, amendment of subsection (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel v. City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsection (d) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd. v. Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is nown to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment of subsections (b) and (d)(1)(B), new subsection (d)(1)(C) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)-(4), amendment of subsection (d)(5), new subsections (d)(5)(A)-(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8-19-94, operative 9-19-94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (e), subsection relettering, and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of first paragraph, repealer and new subsections (a)-(f) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to

changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short–term and long–term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth–Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. Of Calif* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally–binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted 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, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non–approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based

on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(4) An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

3. Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(e), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section 15183(j).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman* v. *Board of Supervisors*, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 Cal.App.4th 713; and *Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services* (1995) 38 Cal.App.4th 1574.

HISTORY

Amendment of section heading, new subsection (d) and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160-15167) and new Article 10 (Sections 15140-15153) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which ey prepare for separate but related projects including general plans, oning changes, and development projects. This approach can eliminate epetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or

(C) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Housing/neighborhood commercial facilities in an urbanized area (Section 15181).

(8) Projects consistent with community plan, general plan, or zoning (Section 15183).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100 and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

§ 15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21096, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. New Article 11 (Section 15180) filed 12-14-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160-15170) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision–making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision–making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467.

HISTORY

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (b) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman* v. *Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

§ 15167. Staged EIR.

(a)Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren–Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case–by–case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795 (1973).

§ 15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15170. Joint EIR–EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5. Master Environmental Impact Report

§ 15175. Master EIR.

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21156, 21157 and 21089, Public Resources Code.

HISTORY

1. New article 11.5 (sections 15175–15175.5) and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15176. Contents of a Master EIR.

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office–commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126, subdivision (d)(5), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

(c) A description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel–specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15177. Subsequent Projects Within the Scope of the MEIR.

(a) After a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subsection (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project–specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21157, 21157.6 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15178. Subsequent Projects Identified in the MEIR.

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project–specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179. Limitations on the Use of the Master EIR.

The certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179.5. Focused EIRs and Small Projects.

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed–use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one–half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated

through the preparation of a subsequent environmental impact report or a supplemental environmental impact report.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21158.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 12. Special Situations

§ 15180. Redevelopment Projects.

(a) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY

1. New Article 12 (Sections 15190–15192) filed 1–6–76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4–2–76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7–13–83; effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a further, specific finding as to:

1. Whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

§ 15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project–specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

§ 15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

§ 15186. School Facilities.

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials,wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will consult with other agencies in this regard.

(b) When a project located within one–fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(2) Notify the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(1) The negative declaration or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This does not include a natural gas pipeline used only to supply the school or neighborhood.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one–fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school board makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.

(e) The following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. §66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(4) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(5) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(6) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15187. Environmental Review of New Rules and Regulations.

(a) At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21159 and 21159.4, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15188. Focused EIR for Pollution Control Equipment.

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

(1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

(2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

(3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project–specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth–inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15189. Compliance with Performance Standard or Treatment Requirement Rule or Regulation.

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project–specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.2, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15190. Deadlines for Compliance with Sections 15188 and 15189.

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.3, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 13. Review and Evaluation of EIRs and Negative Declarations

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. New Article 13 (Sections 15201–15203) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

HISTORY

1. Amendment of subsection (e) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specific effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21081.6, 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system oper-

ated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) The number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083, 21104 and 21153, Public Resources Code. Formerly Section 15161.5.

HISTORY

1. Amendment of subsections (a) and (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 74663 of the Government Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento–San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference. Section 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (b)(5) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. New subsection (a)(1) designator and new subsection (a)(2) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

§ 15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

§ 15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

§ 15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

History

1. New Article 14 (Sections 15220–15228) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

§ 15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR–EIS or negative declaration–finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

§ 15223. Consultation with Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

§ 15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

§ 15225. Circulation of Documents.

(a) Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.8 and 21092, Public Resources Code.

History

1. New subsection (a) designator, new subsections (b)–(b)(2), and amendment of Note filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings,

(d) Joint environmental documents.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

§ 15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21101, Public Resources Code.

§ 15228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

§ 15229. Baseline Analysis for Military Base Reuse Plan EIRs.

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate–income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no–project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter–Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 15. Litigation

§ 15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 15112 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY

1. New Article 15 (Sections 15230–15233) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15231. Adequacy of EIR or Negative Declaration for Use by Lead and Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

HISTORY

1. Amendment of section heading filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

§ 15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for noncompliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

§ 15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

SECRETARY FOR RESOURCES
ATTENTION: CALIFORNIA EIR MONITOR
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21088, Public Resources Code.

HISTORY

1. New Article 16 (Section 15240) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 17. Exemption for Certified State Regulatory Programs

§ 15250. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New Article 17 (Sections 15250–15253) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg–Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer–Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Food and Agriculture and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The regulations of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

(k) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren–Alquist Act, commencing with Public Resources Code Section 25500.

(l) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(m) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(n) The program of the Delta Protection Commission involving the preparation and adoption of a Resource Management Plan for the Sacramento–San Joaquin Delta (Pub. Resources Code § 29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions

of the Commission's Resource Management Plan (Pub. Resources Code § 29763.5).

(o) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New subsection (m) filed 3–1–89; operative 3–31–89 (Register 89, No. 10).
2. New subsection (n) filed 11–9–94; operative 12–9–94 (Register 94, No. 45).
3. New subsection (o) filed 8–27–98; operative 8–27–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

§ 15252. Substitute Document.

The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(a) A description of the proposed activity, and

(b) Either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

§ 15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in Subsection (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in Subsection (b). Where a certified agency does not meet the criteria in Subsection (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

Article 18. Statutory Exemptions

§ 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY

1. New Article 18 (Sections 15260–15277) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on–going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo v. Yorty*, 32 Cal. App. 3d 795.

§ 15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This

§ 15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

§ 15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

§ 15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3)Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra–city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

§ 15274. Family Day Care Homes.

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in–home care for up to twelve children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in–home care for up to six children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high–occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

§ 15276. Transportation Improvement and Congestion Management Programs.

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(13), Public Resources Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Section 21080(b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

§ 15278. Application of Coatings.

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10–day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a no-

section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

§ 15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 13389, Water Code.

§ 15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 51119, Government Code.

§ 15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long–range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long–range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal programs and long–range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

§ 15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

§ 15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

§ 15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case–by–case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

§ 15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long–term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short–term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section180.2 of the Streets and Highways Code, Section 180 et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency* v. *City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County* v. *Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15270. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation f the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

tice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Chapter 1131, Statutes of 1993, Section 1.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15279. Housing for Agricultural Employees.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined below, provided the development is either:

(1) Affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, there is no public financial assistance for the development project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower–income households for a period of at least 15 years; or

(2) Affordable to low and moderate–income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, there is public financial assistance for the project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to low and moderate–income households for a period of at least 15 years.

(b) The development must also meet all the following criteria:

(1) It is consistent with the applicable city, county, or city and county general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning, as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) If the project is proposed in an urbanized area, it does not exceed 45 dwelling units, or if it consists of dormitories, barracks or other group living facilities houses not more than 45 agricultural employees, and its site is adjacent on at least two sides to land that has been previously developed.

(4) If the project is proposed in a nonurbanized area, its site is zoned for general agricultural use and the project consists of not more than 20 dwelling units or, if it consists of dormitories, barracks or other group living facilities, it houses not more than 20 agricultural employees.

(5) Its site is not more than five acres in area, except that a project located in an area with a population density of at least 1000 persons per square mile shall not be more than two acres in area.

(6) Its site is, or can be, adequately served by utilities.

(7) Its site has no value as wildlife habitat.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962 of the Government Code.

(9) It will not involve the demolition of, or any substantial adverse change in, any structure that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(c) As used in this section, "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(d) As used in this section, "urbanized area" means either of the following:

(1) an area with a population density of at least 1000 persons per square mile; or

(2) an area with a population density of less than 1000 persons per square mile that is identified as an urban area in the general plan adopted by the applicable city, county, or city and county and was not designated at the time the application was deemed complete as an area reserved for future urban growth.

(e) This section does not apply if the public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15280. Lower–Income Housing Projects.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area, provided that it is either:

(1) Affordable to lower–income households, as defined in Section 50079.5 of the Health and Safety Code, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower income households for a period of at least 15 years; or

(2) Affordable to low and moderate–income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(b) The development must also meet all the following criteria:

(1) It is consistent with the local jurisdiction's general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) Its site has been previously developed or is currently developed with urban uses, or the immediately contiguous properties surrounding the site are or have been previously developed with urban uses.

(4) Its site is not more than two acres in area.

(5) Its site is, or can be, adequately served by utilities.

(6) Its site has no value as wildlife habitat.

(7) It will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962.5 of the Government Code, and the site has been subject to an assessment by a California registered environmental assessor to determine both the presence of hazardous contaminants, if any, and the potential for exposure of site occupants to significant health hazards from nearby properties and activities.

(c) For purposes of this section, "urbanized area" means an area that has a population density of at least 1000 persons per square mile.

(d) If hazardous contaminants are found on the site, they must be removed or any significant effects mitigated to a level of insignificance in

order to apply this exemption. If a potential for exposure to significant health hazards from nearby properties and activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance in order to apply this exemption. Any removal or mitigation to insignificance must be completed prior to any residential occupancy of the project.

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.14, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15281. Air Quality Permits.

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.24, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subsection summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right–of–way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The construction of housing or neighborhood commercial facilities in an urbanized area pursuant to the provisions of Section 21080.7 of the Public Resources Code.

(f) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(g) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(h) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(i) The adoption of an ordinance regarding second units in a single–family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(j) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(k) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(l) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(m) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code § 29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(n) Minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(o) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(p) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(q) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(r) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(s) Determinations made regarding a city or countys regional housing needs as set forth in Section 65584 of the Government Code.

(t) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(u) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(v) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(w) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735 and 44203(g), Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15283. Housing Needs Allocation.

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65584, Government Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15284. Pipelines.

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

(1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one–half mile at a time.

(2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.

(4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.

(5) Project activities take place within an existing right–of–way and that right–of–way will be restored to its pre–project condition upon completion of the project.

(6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(c) When the lead agency determines that a project meets all of the criteria of subdivisions (a) and (b), the party undertaking the project shall do all of the following:

(1) Notify in writing all responsible and trustee agencies, as well as any public agency with environmental, public health protection, or emergency response authority, of the lead agency's invocation of this exemption.

(2) Mail notice of the project to the last known name and address of all organizations and individuals who have previously requested such notice and notify the public in the affected area by at least one of the following procedures:

(A) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on and off site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The notice shall include a brief description of the proposed project and its location, and the date, time, and place of any public meetings or hearings on the proposed project. This notice may be combined with the public notice required under other law, as applicable, but shall meet the preceding minimum requirements.

(3) In the case of private rights–of–way over private property, receive from the underlying property owner permission for access to the property.

(4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.23, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15285. Transit Agency Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short–term investments, and unrestricted short–term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080 and 21080.32, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 19. Categorical Exemptions

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

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§ 15064

§ 15082

§ 15086

§ 15130

§ 15176

§ 15205

§ 15206

No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.

2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

3. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

3. New subsection (c)(3) and subsection renumbering filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a)(2), new subsection (b)(3) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the proj-

ect, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1)(A) Except as otherwise required by Section 15065, a change in the environment is not a significant effect if the change complies with a standard that meets the definition in subsection (h)(3).

(B) If there is a conflict between standards, the lead agency shall determine which standard is appropriate for purposes of this subsection based upon substantial evidence in light of the whole record.

(C) Notwithstanding subsection (h)(1)(A), if the lead agency determines on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(2) In the absence of a standard that satisfies subsection (h)(1)(A), the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(3) For the purposes of this subsection a "standard" means a standard of general application that is all of the following:

(A) a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(B) adopted for the purpose of environmental protection;

(C) adopted by a public agency through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency;

(D) one that governs the same environmental effect which the change in the environment is impacting; and,

(E) one that governs within the jurisdiction where the project is located.

(4) This definition includes thresholds of significance adopted by lead agencies which meet the requirements of this subsection.

(i)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. "Probable future projects" are defined in Section 15130.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over

the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

(4) A lead agency may determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. Such de minimus incremental impacts, by themselves, do not trigger the obligation to prepare an EIR. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8–24–98; operative 8–24–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)–(i)(5) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending subsections (g), (h)(1)(A), (h)(1)(C) and (h)(2) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an 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.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) 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 for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the 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.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state–owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to de-

termine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code § 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission." Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084 and 21084.1, Public Resources Code; and *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non–compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15065. Mandatory Findings of Significance.

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially 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, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short–term environmental goals to the disadvantage of long–term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects as defined in Section 15130.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code; and *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6. Negative Declaration Process

§ 15070. Decision to Prepare a Negative or Mitigated Negative Declaration.

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

(a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or

(b) The initial study identifies potentially significant effects, but:

(1) Revisions in the project plans or proposals made by or agreed to by the applicant before a proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

(2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21064, 21064.5, 21080(c) and 21082.1, Public Resources Code; *Friends of B Street* v. *City of Hayward*, (1980) 106 Cal. App. 3d 988; *Running Fence Corp.* v. *Superior Court*, (1975) 51 Cal. App. 3d 400.

HISTORY

1. Repealer of Article 6 (Sections 15060–15069.8) and new Article 6 (Sections 15070–15075) filed 7–13–83; designated effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15071. Contents.

A negative declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the initial study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration.

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subsection (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6 and 21151.8, Public Resources Code.

HISTORY

1. Amendment of subsections (a), (a)(3) and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

(d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to the state agencies.

(e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative dec-

laration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000(c), 21003(b), 21080(c), 21081.6, 21091 and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose*, (1980) 101 Cal. App. 3d 842.

HISTORY

1. Amendment of section heading, section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA , which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; and *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1 and 21096, Public Resources Code; *Friends of B Street v. City of Hayward*, (1980) 106 Cal. App. 3d 988.

HISTORY

1. Amendment of section heading, section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(f), Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.

(a) After deciding to carry out or approve a project for which a negative declaration or mitigated negative declaration has been approved, the lead agency shall file a notice of determination. For projects with phases, the lead agency shall file a notice of determination after deciding to carry out or approve each phase.

(b) The notice of determination must include:

(1) An identification of the project including its common name where possible, and its location.

(2) A brief description of the project.

(3) The date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration has been prepared pursuant to the provisions of CEQA.

(6) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with OPR.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires a discretionary approval from any state agency, the local lead agency shall also file with OPR.

(e) All notices filed pursuant to this section shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt. Each notice shall remain posted for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period it was posted. The local lead agency shall retain the notice for not less than 9 months. The filing of the notice of determination and the posting on a list of such notices starts a 30–day statute of limitations on court challenges to the approval under CEQA.

(f) Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, 82) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (c) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (f) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 6.5. Statutory Exemptions

HISTORY

1. Repealer of Article 6.5 (Sections 15070–15079.7) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 78, No. 5.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 7. EIR Process

§ 15080. General.

To the extent possible, the EIR process should be combined with the existing planning, review, and project approval process used by each public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. Repealer of Article 7 (Sections 15080–15089) and new Article 7 (Sections 15080–15096) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15081. Decision to Prepare an EIR.

The EIR process starts with the decision to prepare an EIR. This decision will be made either during preliminary review under Section 15060 or at the conclusion of an initial study after applying the standards described in Section 15064.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68; *Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988.

§ 15081.5. EIRs Required by Statute.

(a) A lead agency shall prepare or have prepared an EIR for the following types of projects. An initial study may be prepared to help identify the significant effects of the project.

(1) The burning of municipal wastes, hazardous wastes, or refuse–derived fuel, including but not limited to tires, if the project is either:

(A) The construction of a new facility; or

(B) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent. This does not apply to any project exclusively burning hazardous waste for which a determination to prepare a negative declaration, or mitigated negative declaration or environmental impact report was made prior to July 14, 1989. The amount of expansion of an existing facility is calculated pursuant to subdivision (b) of Section 21151.1 of the Public Resources Code.

(C) Subsection (1) of the subdivision does not apply to:

1. Projects for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

2. Any of the types of burn or thermal processing projects listed in subdivision (d) of Section 21151.1 of the Public Resources Code.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code. Preparation of an EIR is not mandatory if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facility permit pursuant to Section 25200 of the Health and Safety Code to an off–site large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of that code. Preparation of an EIR is not mandatory if the facility only manges hazardous waste which is identified or listed pursuant to Section 25140 or Section 25141 of the Health and Safety Code on or after January 1, 1992; or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992. "Initial issuance" does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(4) Any open pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act (beginning at Section 2710 of the Public Resources Code) and which utilizes a cyanide heap–leaching process for the purpose of extracting gold or other precious metals.

(5) An initial base reuse plan as defined in Section 15229.

(b) A lead agency shall prepare or have prepared an EIR for the selection of a California Community College, California State University, University of California, or California Maritime Academy campus location and approval of a long range development plan for that campus.

(1) The EIR for a long range development plan for a campus shall include an analysis of, among other significant impacts, those environmental effects relating to changes in enrollment levels.

(2) Subsequent projects within the campus may be addressed in environmental analyses tiered on the EIR prepared for the long range development plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.09, 21083.8, 21083.8.1, 21151.1 and 21151.7, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15082. Determination of Scope of EIR.

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to each responsible agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

(1) The notice of preparation shall provide the responsible agencies with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project indicated either on an attached map (preferably a copy of a U.S.G.S. 15' or 7 1/2' topographical map identified by quadrangle name, or by a street address in an urbanized area), and

(C) Probable environmental effects of the project.

(2) A sample for a notice of preparation is shown in Appendix I. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subsection (a), each responsible agency shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility which must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures which the responsible agency will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible agency fails by the end of the 30 day period to provide the lead agency with either a response to the notice or a well justified request for additional time, the lead agency may presume that the responsible agency has no response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information which the responsible agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings which involve state agencies.

(d) State Clearinghouse. When one or more state agencies will be a responsible agency or a trustee agency, the lead agency shall send a notice of preparation to each state responsible agency and each trustee agency with a copy to the State Clearinghouse in the Office of Planning and Research. The State Clearinghouse will ensure that the state responsible agencies and trustees reply to the lead agency within the required time.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment of subsection (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Change without regulatory effect amending subsection (a)(2) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15083. Early Public Consultation.

Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

(a) Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important.

(b) Scoping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.

(c) Where scoping is used, it should be combined to the extent possible with consultation under Section 15082.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code; Section 4, Chapter 480 of the Statutes of 1981; 40 Code of Federal Regulations, Part 1501.7.

§ 15083.5. City or County Consultation with Water Agencies.

This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.

(a) This guideline shall apply only to projects which meet all of the following criteria:

(1) The project consists of any of the following activities for which an application has been submitted to a city or county:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.

(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.

(D) A hotel, motel or both with more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park intended to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) Any mixed-use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500-dwelling unit project.

(2) As part of approval of the project, any of the following are required:

(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subsection (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single–dry, and multiple–dry water years as included in the 20–year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21151.9, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15084. Preparing the Draft EIR.

(a) The draft EIR shall be prepared directly by or under contract to the lead agency. The required contents of a draft EIR are discussed in Article beginning with Section 15120.

(b) The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project.

(c) Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

(d) The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

(e) Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082.1, Public Resources Code.

§ 15085. Notice of Completion.

(a) As soon as the draft EIR is completed, a notice of completion must be filed with OPR in a printed hard copy or in electronic form on a diskette or by electronic mail transmission.

(b) The notice of completion shall include:

(1) A brief description of the project,

(2) The proposed location of the project,

(3) An address where copies of the draft EIR are available, and

(4) The period during which comments will be received on the draft EIR.

(c) A form for the notice of completion is included in the appendices.

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the cover form required by the State Clearinghouse will serve as the notice of completion.

(e) Public agencies are encouraged to make copies of notices of completion filed pursuant to this section available in electronic format on the Internet.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21161, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a) and new subsection (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15086. Consultation Concerning Draft EIR.

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and

public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect repealing subsection (a)(6) and renumbering subsections filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15087. Public Review of Draft EIR.

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to OPR. This notice shall be given as provided under Section 15105. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subsection (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subsection (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the Clearinghouse.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21153 and 21161, Public Resources Code.

HISTORY

1. Amendment of subsection (a) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a)(3) and NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
3. Amendment of section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15088. Evaluation of and Response to Comments.

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments received during the noticed comment period and any extensions and may respond to late comments.

(b) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be

addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

(c) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *People* v. *County of Kern*, (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

§ 15088.5. Recirculation of an EIR Prior to Certification.

(a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

(c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.

(d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.

(e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

(f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. Following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(1) When the EIR is substantially revised and the entire EIR is recirculated, the lead agency may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either within the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR. The lead agency shall send directly to every agency, person, or organization that commented on the prior draft EIR a notice of the recirculation specifying that new comments must be submitted.

(2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.

(g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. New section filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. New subsections (f)–(g) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15089. Preparation of Final EIR.

(a) The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines.

(b) Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

§ 15090. Certification of the Final EIR.

(a) Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

(b) When an EIR is certified by a non–elected decision–making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision–making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082.1, 21100 and 21151, Public Resources Code; *City of Carmel–by–the–Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kleist* v. *City of Glendale* (1976) 56 Cal. App. 3d 770.

HISTORY

1. Amendment of section heading, section and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22)

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a

brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council* (1978) 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21085, Public Resources Code; *Friends of Mammoth v. Board of Supervisors*, (1972) 8 Cal. App. 3d 247; San *Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco* (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsections (b) and (c) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) A notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 9 months.

(e) A notice of determination filed with OPR is available for public inspection and shall be posted for a period of at least 30 days.

(f) The filing of the notice of determination and the posting of such notice starts a 30-day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection relettering, and amendment of newly designated subsection (f) filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo* v. *Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15097. Mitigation Monitoring or Reporting.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant

to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or by the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

§15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix K and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision-making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision-making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of* ..., 39 Cal. App. 3d 830.

HISTORY

1. Amendment of section heading, section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (d) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency procedures may provide that the one-year time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR-EIS or combined negative declaration-finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950-65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91-190 as amended, 42 U.S.C.A. 4321-4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment of subsections (b) and (d)(1)(B), new subsection (d)(1)(C) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C. v. County of El Dorado*, (1982) 131 Cal. App. 3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth-Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)-(4), amendment of subsection (d)(5), new subsections (d)(5)(A)-(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (e), subsection relettering, and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of first paragraph, repealer and new subsections (a)-(f) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Repealer of subsection (b)(1), subsection renumbering, amendment of subsection (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(v), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsection (d) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the

project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth–Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. Of Calif* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally–binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted 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, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non-approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations

that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(4) An EIR may determine that a project's contribution to a significant cumulative impact is de minimus and thus is not significant. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency;

1. When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

2. "Probable future projects" may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released, unless abandoned by the applicant; projects included in an adopted capital improvements program, general plan, regional transportation plan, or other similar plan; projects included in a summary of projections of projects (or development areas designated) in a general plan or a similar plan; projects anticipated as later phase of a previously approved project (e.g. a subdivision); or those public agency projects for which money has been budgeted.

3. Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(2) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(3) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one or more previously certified EIRs may be incorporated by reference pursuant to the provisions for tiering and program EIRs. No further cumulative impacts analysis is required when a project is consistent with a general, specific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section15183(j).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman* v. *Board of Supervisors*, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 Cal.App.4th 713; and *Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160–15167) and new Article 10 (Sections 15140–15153) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR;

and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site–specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large–scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site–specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or

(C) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple–family residential development/residential and commercial or retail mixed–use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Housing/neighborhood commercial facilities in an urbanized area (Section 15181).

(8) Projects consistent with community plan, general plan, or zoning (Section 15183).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100 and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the lead agency shall file a notice of determination.

(c) An EIR prepared for an earlier project may also be used as part of an initial study to document a finding that a later project will not have a significant effect. In this situation a negative declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21151 and 21166, Public Resources Code.

§ 15154. Projects Near Airports.

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport–related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21096, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 11. Types of EIRs

§ 15160. General.

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead agencies may use other variations consistent with the guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

HISTORY

1. New Article 11 (Section 15180) filed 12–14–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 50).
2. Repealer of Article 11 (Section 15180) and new Article 11 (Sections 15160–15170) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15161. Project EIR.

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code.

§ 15162. Subsequent EIRs and Negative Declarations.

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subsection (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subsection (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

HISTORY

1. Amendment of section heading, text and NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (c) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15163. Supplement to an EIR.

(a) The lead or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

(1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

(b) The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

(c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

(d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.

(e) When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code.

§ 15164. Addendum to an EIR or Negative Declaration.

(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d

HISTORY

1. Amendment of section heading, text and NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subection (b) and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15165. Multiple and Phased Projects.

Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061, 21100 and 21151, Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397 (1979).

§ 15166. EIR As Part of a General Plan.

(a) The requirements for preparing an EIR on a local general plan, element, or amendment thereof will be satisfied by using the general plan, or element document, as the EIR and no separate EIR will be required, if:

(1) the general plan addresses all the points required to be in an EIR by Article 9 of these guidelines and

(2) the document contains a special section or a cover sheet identifying where the general plan document addresses each of the points required.

(b) Where an EIR rather than a negative declaration has been prepared for a general plan, element, or amendment thereto, the EIR shall be forwarded to the State Clearinghouse for review. The requirement shall apply regardless of whether the EIR is prepared as a separate document or as a part of the general plan or element document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21083, 21100, 21104, 21151 and 21152, Public Resources Code.

§ 15167. Staged EIR.

(a) Where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin, a staged EIR may be prepared covering the entire project in a general form. The staged EIR shall evaluate the proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of the entire project. The aspect of the project before the public agency for approval shall be discussed with a greater degree of specificity.

(b) When a staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(c) Where a statute such as the Warren-Alquist Energy Resources Conservation and Development Act provides that a specific agency shall be the lead agency for a project and requires the lead agency to prepare an EIR, a responsible agency which must grant an approval for the project before the lead agency has completed the EIR may prepare and consider a staged EIR.

(d) An agency requested to prepare a staged EIR may decline to act as the lead agency if it determines, among other factors, that:

(1) Another agency would be the appropriate lead agency; and

(2) There is no compelling need to prepare a staged EIR and grant an approval for the project before the appropriate lead agency will take its action on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15168. Program EIR.

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later parts of the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795 (1973).

§ 15169. Master Environmental Assessment.

(a) General. A public agency may prepare a master environmental assessment, inventory, or data base for all, or a portion of, the territory subject to its control in order to provide information which may be used or referenced in EIRs or negative declarations. Neither the content, the format, nor the procedures to be used to develop a master environmental assessment are prescribed by these guidelines. The descriptions contained in this section are advisory. A master environmental assessment is suggested solely as an approach to identify and organize environmental information for a region or area of the state.

(b) Contents. A master environmental assessment may contain an inventory of the physical and biological characteristics of the area for which it is prepared and may contain such additional data and information as the public agency determines is useful or necessary to describe environmental characteristics of the area. It may include identification of existing levels of quality and supply of air and water, capacities and levels of use of existing services and facilities, and generalized incremental effects of different categories of development projects by type, scale, and location.

(c) Preparation.

(1) A master environmental assessment or inventory may be prepared in many possible ways. For example, a master environmental assessment may be prepared as a special, comprehensive study of the area involved, as part of the EIR on a general plan, or as a data base accumulated by indexing EIRs prepared for individual projects or programs in the area involved.

(2) The information contained in a master environmental assessment should be reviewed periodically and revised as needed so that it is accurate and current.

(3) When advantageous to do so, master environmental assessments may be prepared through a joint exercise of powers agreement with neighboring local agencies or with the assistance of the appropriate Council of Governments.

(d) Uses.

(1) A master environmental assessment can identify the environmental characteristics and constraints of an area. This information can be used to influence the design and location of individual projects.

(2) A master environmental assessment may provide information agencies can use in initial studies to decide whether certain environmental effects are likely to occur and whether certain effects will be significant.

(3) A master environmental assessment can provide a central source of current information for use in preparing individual EIRs and negative declarations.

(4) Relevant portions of a master environmental assessment can be referenced and summarized in EIRs and negative declarations.

(5) A master environmental assessment can assist in identifying long range, areawide, and cumulative impacts of individual projects proposed in the area covered by the assessment.

(6) A master environmental assessment can assist a city or county in formulating a general plan or any element of such a plan by identifying environmental characteristics and constraints that need to be addressed in the general plan.

(7) A master environmental assessment can serve as a reference document to assist public agencies which review other environmental documents dealing with activities in the area covered by the assessment. The public agency preparing the assessment should forward a completed copy to each agency which will review projects in the area.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21003, Public Resources Code.

§ 15170. Joint EIR–EIS.

A lead agency under CEQA may work with a federal agency to prepare a joint document which will meet the requirements of both CEQA and NEPA. Use of such a joint document is described in Article 14, beginning with Section 15220.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5. Master Environmental Impact Report

§ 15175. Master EIR.

(a) The Master EIR procedure is an alternative to preparing a project EIR, staged EIR, or program EIR for certain projects which will form the basis for later decision making. It is intended to streamline the later environmental review of projects or approval included within the project, plan or program analyzed in the Master EIR. Accordingly, a Master EIR shall, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects.

(b) A lead agency may prepare a Master EIR for any of the following classes of projects:

(1) A general plan, general plan update, general plan element, general plan amendment, or specific plan.

(2) Public or private projects that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(3) A project that consists of smaller individual projects which will be carried out in phases.

(4) A rule or regulation which will be implemented by later projects.

(5) Projects that will be carried out or approved pursuant to a development agreement.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency, including a joint powers authority, for the reuse of a federal military base or reservation that has been closed or is proposed for closure by the federal government.

(8) A regional transportation plan or congestion management plan.

(9) Regulations adopted by the California Department of Fish and Game for the regulation of hunting and fishing.

(c) A lead agency may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21156, 21157 and 21089, Public Resources Code.

HISTORY

1. New article 11.5 (sections 15175–15175.5) and section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15176. Contents of a Master EIR.

A lead agency shall include in a Master EIR all of the following:

(a) A detailed discussion as required by Section 15126.

(b) A description of anticipated subsequent projects that are within the scope of the Master EIR, including information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to all of the following:

(1) The specific type of project anticipated to be undertaken such as a single family development, office–commercial development, sewer line installation or other activities.

(2) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and with regard to a public works facility, its anticipated capacity and service area.

(3) The anticipated location for any subsequent development projects, and, consistent with the rule of reason set forth in Section 15126.6(f), alternative locations for any such projects.

(4) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects, or an explanation as to why practical planning considerations render it impractical to identify any such program or scheduling or other device at the time of preparing the Master EIR.

(c) A description of potential impacts of anticipated projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the Master EIR. This description shall not be construed as a limitation on the impacts which may be considered in a focused EIR.

(d) Where a Master EIR is prepared in connection with a project identified in subdivision (b)(1) of section 15175, the anticipated subsequent projects included within a Master EIR may consist of later planning approvals, including parcel–specific approvals, consistent with the overall planning decision (e.g., general plan, or specific plan, or redevelopment plan) for which the Master EIR has been prepared. Such subsequent projects shall be adequately described for purposes of subdivision (b) or of this section (15176) if the Master EIR and any other documents embodying or relating to the overall planning decision identify the land use designations and the permissible densities and intensities of use for the affected parcel(s). The proponents of such subsequent projects shall not be precluded from relying on the Master EIR solely because that document did not specifically identify or list, by name, the subsequent project as ultimately proposed for approval.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (b)(3) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15177. Subsequent Projects Within the Scope of the MEIR.

(a) After a Master EIR has been prepared and certified, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to only limited environmental review.

(b) Except as provided in subsection (2) of this subdivision, neither a new environmental document nor the preparation of findings pursuant to section 15091 shall be required of a subsequent project when all of the following requirements are met:

(1) The lead agency for the subsequent project is the lead agency or any responsible agency identified in the Master EIR.

(2) The lead agency for the subsequent project prepares an initial study on the proposal. The initial study shall analyze whether the subsequent project was described in the Master EIR and whether the subsequent project may cause any additional significant effect on the environment which was not previously examined in the Master EIR.

(3) The lead agency for the subsequent project determines, on the basis of written findings, that no additional significant environmental effect will result from the proposal, no new additional mitigation measures or alternatives may be required, and that the project is within the scope of the Master EIR. "Additional significant environmental effect" means any project–specific effect which was not addressed as a significant effect in the Master EIR.

(c) Whether a subsequent project is within the scope of the Master EIR is a question of fact to be determined by the lead agency based upon a review of the initial study to determine whether there are additional significant effects or new additional mitigation measures or alternatives required for the subsequent project that are not already discussed in the Master EIR.

(d) Prior to approval of the proposed subsequent project, the lead agency shall incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR and provide notice in the manner required by Section 15087.

(e) When the lead agency approves a project pursuant to this section, the lead agency shall file a notice in the manner required by Section 15075.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21157, 21157.6 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15178. Subsequent Projects Identified in the MEIR.

(a) When a proposed subsequent project is identified in the Master EIR, but the lead agency cannot make a determination pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, and the lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is adequate for the subsequent project, the lead agency shall prepare a mitigated negative declaration or a focused EIR if, after preparing an initial study, the lead agency determines that the project may result in new or additional significant effects. Whether the cumulative impacts, growth inducing impacts and irreversible significant effects analyses are adequate is a question of fact to be determined by the lead agency based upon a review of the proposed subsequent project in light of the Master EIR.

(b) A lead agency shall prepare a mitigated negative declaration for any proposed subsequent project if both of the following occur:

(1) The initial study prepared pursuant to Section 15177 has identified potentially new or additional significant environmental effects that were not analyzed in the Master EIR; and

(2) Feasible mitigation measures or alternatives will be incorporated to revise the subsequent project before the negative declaration is released for public review pursuant to Section 15073 in order to avoid or mitigate the identified effects to a level of insignificance.

(c) A lead agency shall prepare a focused EIR if the subsequent project may have a significant effect on the environment and a mitigated negative declaration pursuant to subdivision (b) of this section cannot be prepared.

(1) The focused EIR shall incorporate by reference the Master EIR and analyze only the subsequent project's additional significant environmental effects and any new or additional mitigation measures or alternatives that were not identified and analyzed by the Master EIR. "Additional significant environmental effects" are those project–specific effects on the environment which were not addressed as significant in the Master EIR.

(2) A focused EIR need not examine those effects which the lead agency, prior to public release of the focused EIR, finds, on the basis of the initial study, related documents, and commitments from the proponent of a subsequent project, have been mitigated in one of the following manners:

(A) Mitigated or avoided as a result of mitigation measures identified in the Master EIR which the lead agency will require as part of the approval of the subsequent project;

(B) Examined at a sufficient level of detail in the Master EIR to enable those significant effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions of approval, or by other means in connection with approval of the subsequent project; or

(C) The mitigation or avoidance of which is the responsibility of and within the jurisdiction of another public agency and is, or can and should be, undertaken by that agency.

(3) The lead agency's findings pursuant to subdivision (2) shall be included in the focused EIR prior to public release pursuant to Section 15087.

(4) A focused EIR prepared pursuant to this section shall analyze any significant environmental effects when:

(A) Substantial new or additional information shows that the adverse environmental effect may be more significant that was described in the Master EIR; or

(B) Substantial new or additional information shows that mitigation measures or alternatives which were previously determined to be infeasible are feasible and will avoid or reduce the significant effects of the subsequent project to a level of insignificance.

(d) A lead agency shall file a notice of determination shall be filed pursuant to Section 15075 if a project has been approved for which a mitigated negative declaration has been prepared pursuant to this section and a notice of determination shall be filed pursuant to Section 15094 if a project has been approved for which a focused EIR has been prepared pursuant to this section.

(e) When a lead agency determines that the cumulative impacts, growth inducing impacts and irreversible significant effects analysis in the Master EIR is inadequate for the subsequent project, the subsequent project is no longer eligible for the limited environmental review available under the Master EIR process and shall be reviewed according to Article 7 (commencing with Section 15080) of these guidelines. The lead agency shall tier the project specific EIR upon the Master EIR to the extent feasible under Section 15152.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179. Limitations on the Use of the Master EIR.

The certified Master EIR shall not be used in accordance with this article if either (i) it was certified more than five years prior to the filing of an application for a later project, or (ii) a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR, unless the lead agency does one of the following:

(a) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b) Prepares a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i) is incorporated into the previously certified Master EIR, or (ii) references any deletions, additions or other modifications to the previously certified Master EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15179.5. Focused EIRs and Small Projects.

(a) When a project is a multiple family residential development of 100 units or less or is a residential and commercial or retail mixed–use commercial development of not more then 100,000 square feet, whether or not the project is identified in the Master EIR, a focused EIR shall be prepared pursuant to this section when the following conditions are met:

(1) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five years of certification of the focused EIR; and

(2) The parcel on which the project is to be developed is either:

(A) Surrounded by immediately contiguous urban development;

(B) Previously developed with urban uses; or

(C) Within one–half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) This section does not apply where the lead agency can make a finding pursuant to Section 15177 that the subsequent project is within the scope of the Master EIR, where the lead agency can prepare a mitigated negative declaration or focused EIR pursuant to Section 15178, or where, pursuant to Section 15162 or Section 15163, the environmental impact report referenced in subdivision (a)(1) of this section must be updated through the preparation of a subsequent environmental impact report or a supplemental environmental impact report.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21158.5, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 12. Special Situations

§ 15180. Redevelopment Projects.

(a) All public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) An EIR on a redevelopment plan shall be treated as a program EIR with no subsequent EIRs required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21090, Public Resources Code.

HISTORY

1. New Article 12 (Sections 15190–15192) filed 1–6–76 as an emergency; effective upon filing (Register 76, No. 2).
2. Certificate of Compliance filed 4–2–76 (Register 76, No. 14).
3. Repealer of Article 12 (Sections 15190–15193) and new Article 12 (Sections 15180–15185) filed 7–13–83; effective 8–1–83 (Register 83, No. 29). For prior history, see Registers 82, No. 2; 81, Nos. 30 and 45; 80, No. 15; 79, Nos. 18, 23 and 30; and 78, No. 33.
4. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15181. Housing and Neighborhood Commercial Facilities in Urbanized Areas.

(a) A lead agency may approve a project involving the construction of housing or neighborhood commercial facilities in an urbanized area with the use of an EIR or negative declaration previously prepared for a specific plan, local coastal program, or port master plan if the lead agency complies with the requirements of this section.

(b) The procedures for complying with this section are as follows:

(1) The lead agency shall conduct an initial study to determine whether the project may have one or more significant effects on the environment.

(2) The lead agency shall give notice of its proposed use of a previously prepared EIR to all persons who had submitted a written request for notice and shall also give notice by either:

(A) Posting notice on and off the site in the area where the project would be located, or

(B) Mailing notice directly to owners of property contiguous to the project site.

(3) The lead agency shall make the following findings with regard to planning and the previously prepared EIR.

(A) That the project is consistent with either:

1. A specific plan which was adopted for the area pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code, or

2. A local coastal program or port master plan certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20 of the Public Resources Code.

(B) That the specific plan, local coastal program, or port master plan was adopted not more than five years prior to the finding made pursuant to this subsection and that the method of adoption was the procedure specified by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code for adopting specific plans and regulations.

(C) That the specific plan or local coastal program or port master plan was the subject of a certified environmental impact report.

(D) That the environmental impact report is sufficiently detailed so that all the significant effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined. This examination of the previously prepared EIR shall include a further, specific finding as to:

1. Whether there would be any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and

2. Whether measures necessary to mitigate or avoid such effects are included in the EIR.

(E) That a subsequent EIR is not required pursuant to Public Resources Code Section 21166 and Guidelines Section 15162.

(4) The lead agency shall make one or more findings as required by Section 15091 with regard to mitigating or avoiding each significant effect that the project would have on the environment.

(5) The lead agency shall file a notice of determination with the county clerk if the lead agency approves the project.

(c) As used in this section, "neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of such housing.

(d) As used in this section, "urbanized area" means only those areas mapped and designated as urbanized by the U.S. Bureau of the Census.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.7, Public Resources Code.

§ 15182. Residential Projects Pursuant to a Specific Plan.

(a) Exemption. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of this section.

(b) Scope. Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

(c) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occur, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(d) Alternative. This section provides an alternative to the procedure described in Section 15181.

(e) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

(f) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65453, Government Code.

§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously

adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15184. State Mandated Local Projects.

Whenever a state agency issues an order which requires a local agency to carry out a project subject to CEQA, the following rules apply:

(a) If an EIR is prepared for the project, the local agency shall limit the EIR to considering those factors and alternatives which will not conflict with the order.

(b) If a local agency undertakes a project to implement a rule or regulation imposed by a certified state environmental regulatory program listed in Section 15251, the project shall be exempt from CEQA with regard to the significant effects analyzed in the document prepared by the state agency as a substitute for an EIR. The local agency shall comply with CEQA with regard to any site-specific effect of the project which was not analyzed by the certified state agency as a significant effect on the environment. The local agency need not re-examine the general environmental effects of the state rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21080.5 and 21154, Public Resources Code.

§ 15185. Administrative Appeals.

(a) Where an agency allows administrative appeals upon the adequacy of an environmental document, an appeal shall be handled according to the procedures of that agency. Public notice shall be handled in accordance with individual agency requirements and Section 15202(e).

(b) The decisionmaking body to which an appeal has been made shall consider the environmental document and make findings under Sections 15091 and 15093 if appropriate.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

§ 15186. School Facilities.

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials,wastes, and substances will be carefully examined and disclosed in a negative declaration or EIR, and that the lead agency will consult with other agencies in this regard.

(b) When a project located within one-fourth mile of a school involves the construction or alteration of a facility which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions, or which would handle acutely hazardous material or a mixture containing acutely hazardous material in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school when circulating the proposed negative declaration or draft EIR for review.

(2) Notify the affected school district of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school, the negative declaration or EIR prepared for the project shall not be approved or certified by the school board unless:

(1) The negative declaration or EIR contains sufficient information to determine whether the property is:

(A) The site of a current or former hazardous waste or solid waste disposal facility and, if so, whether wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) The site of one or more buried or above ground pipelines which carry hazardous substances, acutely hazardous materials, or hazardous wastes, as defined in Division 20 of the Health and Safety Code. This does not include a natural gas pipeline used only to supply the school or neighborhood.

(2) The lead agency has notified in writing and consulted with the county or city administering agency (as designated pursuant to Section 25502 of the Health and Safety Code) and with any air pollution control district or air quality management district having jurisdiction, to identify facilities within one-fourth mile of the proposed school site which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste. The notice shall include a list of the school sites for which information is sought. Each agency or district receiving notice shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. If any such agency or district fails to respond within that time, the negative declaration or EIR shall be conclusively presumed to comply with this section as to the area of responsibility of that agency.

(3) The school board makes, on the basis of substantial evidence, one of the following written findings:

(A) Consultation identified none of the facilities specified in paragraph (2).

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

1. The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

2. Corrective measures required under an existing order by another agency having jurisdiction over the facilities will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that do not constitute any actual or potential public health danger to persons who would attend or be employed at the proposed school. When the school district board makes such a finding, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.

(e) The following definitions shall apply for the purposes of this section:

(1) "Acutely hazardous material," is as defined in 22 C.C.R. §66260.10.

(2) "Administering agency," is as defined in Section 25501 of the Health and Safety Code.

(3) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(4) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(5) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(6) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15187. Environmental Review of New Rules and Regulations.

At the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, establishing a performance standard, or establishing a treatment requirement, the California Air Resources Board, Department of Toxic Substances Control, Integrated Waste Management Board, State Water Resources Control Board, all regional water quality control boards, and all air pollution control districts and air quality management districts, as defined in Section 39025 of the Health and Safety Code, must perform an environmental analysis of the reasonably foreseeable methods by which compliance with that rule or regulation will be achieved.

(b) If an EIR is prepared by the agency at the time of adoption of a rule or regulation, it satisfies the requirements of this section provided that the document contains the information specified in subdivision (c) below. Similarly, for those State agencies whose regulatory programs have been certified by the Resources Agency pursuant to Section 21080.5 of the Public Resources Code, an environmental document prepared pursuant to such programs satisfies the requirements of this section, provided that the document contains the information specified in subdivision (c) below.

(c) The environmental analysis shall include at least the following:

(1) An analysis of reasonably foreseeable environmental impacts of the methods of compliance;

(2) An analysis of reasonably foreseeable feasible mitigation measures relating to those impacts; and

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts.

(d) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites. The agency may utilize numerical ranges and averages where specific data is not available, but is not required to, nor should it, engage in speculation or conjecture.

(e) Nothing in this section shall require the agency to conduct a project level analysis.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which this section requires an environmental analysis.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21159 and 21159.4, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15188. Focused EIR for Pollution Control Equipment.

This section applies to projects consisting solely of the installation of pollution control equipment and other components necessary to the installation of that equipment which are undertaken for the purpose of complying with a rule or regulation which was the subject of an environmental analysis as described in Section 15187.

(a) The lead agency for the compliance project may prepare a focused EIR to analyze the effects of that project when the following occur:

(1) the agency which promulgated the rule or regulation certified an EIR on that rule or regulation, or reviewed it pursuant to an environmental analysis prepared under a certified regulatory program and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project;

(2) the focused EIR for the compliance project is certified within five years of the certified EIR or environmental analysis required by subdivision (a)(1); and

(3) the EIR prepared in connection with the adoption of the rule or regulation need not be updated through the preparation of a subsequent EIR or supplemental EIR pursuant to section 15162 or section 15163.

(b) The discussion of significant environmental effects in the focused EIR shall be limited to project-specific, potentially significant effects which were not discussed in the environmental analysis required under Section 15187. No discussion of growth-inducing or cumulative impacts is required. Discussion of alternatives shall be limited to alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15189. Compliance with Performance Standard or Treatment Requirement Rule or Regulation.

This section applies to projects consisting solely of compliance with a performance standard or treatment requirement which was the subject of an environmental analysis as described in Section 15187.

(a) If preparing a negative declaration, mitigated negative declaration or EIR on the compliance project the lead agency for the compliance project shall, to the greatest extent feasible, use the environmental analysis prepared pursuant to Section 15187. The use of numerical averages or ranges in the environmental analysis prepared under Section 15187 does not relieve the lead agency on the compliance project from its obligation to identify and evaluate the environmental effects of the project.

(b) Where the lead agency determines that an EIR is required for the compliance project, the EIR need address only the project–specific issues or other issues that were not discussed in sufficient detail in the environmental analysis prepared under Section 15187. The mitigation measures imposed by the lead agency shall be limited to addressing the significant effects on the environment of the compliance project. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.2, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15190. Deadlines for Compliance with Sections 15188 and 15189.

(a) The lead agency for a compliance project under either Section 15188 or Section 15189 shall determine whether an EIR or negative declaration should be prepared within 30 days of its determination that the application for the project is complete.

(b) Where the EIR will be prepared under contract to the lead agency for the compliance project, the agency shall issue a request for proposal for preparation of the EIR not later than 30 days after the deadline for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date on the request for proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21159.3, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 13. Review and Evaluation of EIRs and Negative Declarations

§ 15200. Purposes of Review.

The purposes of review of EIRs and negative declarations include:

(a) Sharing expertise,

(b) Disclosing agency analyses,

(c) Checking for accuracy,

(d) Detecting omissions,

(e) Discovering public concerns, and

(f) Soliciting counter proposals.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21000, 21108 and 21152, Public Resources Code; *Environmental Defense Fund* v. *Coastside County Water District* (1972) 27 Cal. App. 3d 695; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. New Article 13 (Sections 15201–15203) filed 2–2–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Repealer of Article 13 (Sections 15201–15203) and new Article 13 (Sections 15200–15209) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
3. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15201. Public Participation.

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District* (1972) 27 Cal. App. 3d 695; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15202. Public Hearings.

(a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communications.

(b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.

(c) A public hearing on the environmental impact of a project should usually be held when the lead agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.

(d) A draft EIR or negative declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the lead agency or at another location expected to be convenient to the public.

(e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.

(f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.

(g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21082, 21108 and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc.* v. *Board of Supervisors* (1974) 38 Cal. App. 3d 272.

HISTORY

1. Amendment of subsection (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15203. Adequate Time for Review and Comment.

The lead agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or negative declaration that it has prepared.

(a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable clearinghouse review periods.

(b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21108 and 21152, Public Resources Code. Formerly Sections 15160(a) and (e).

§ 15204. Focus of Review.

(a) In reviewing draft EIRs, persons and public agencies should focus the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

(b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

(1) Identify the specific effect,

(2) Explain why they believe the effect would occur, and

(3) Explain why they believe the effect would be significant.

(c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

(d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.

(e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

(f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080, 21081.6, 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15205. Review by State Agencies.

(a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812–3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.

(b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:

(1) Draft EIRs and negative declarations prepared by a state agency where such agency is a lead agency.

(2) Draft EIRs and negative declarations prepared by a public agency where a state agency is a responsible agency, trustee agency, or otherwise has jurisdiction by law with respect to the project.

(3) Draft EIRs and negative declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.

(4) Draft EIRs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).

(c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.

(d) When an EIR or negative declaration is submitted to the State Clearinghouse for review, the review period set by the lead agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for negative declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the lead agency.

(e) The number of copies of an EIR or negative declaration submitted to the State Clearinghouse shall not be less than ten unless the State Clearinghouse approves a lower number in advance.

(f) While the lead agency is encouraged to contact the regional and district offices of state responsible agencies, the lead agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsection (a) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15206. Projects of Statewide, Regional, or Areawide Significance.

(a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.

(1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment.

(2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.

(b) The lead agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:

(1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a negative declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.

(2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subsection include:

(A) A proposed residential development of more than 500 dwelling units.

(B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.

(C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.

(D) A proposed hotel/motel development of more than 500 rooms.

(E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.

(3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

(4) A project for which an EIR and not a negative declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:

(A) The Lake Tahoe Basin.

(B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.

(C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.

(D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.

(E) The Sacramento–San Joaquin Delta, as defined in Water Code Section 12220.

(F) The Suisun Marsh as defined in Public Resources Code Section 29101.

(G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.

(5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.

(6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.

(7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference. Section 21083, Public Resources Code.

HISTORY

1. Amendment of subsection (b)(5) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. New subsection (a)(1) designator and new subsection (a)(2) filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (b)(4)(B) filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15207. Failure to Comment.

If any public agency or person who is consulted with regard to an EIR or negative declaration fails to comment within a reasonable time as specified by the lead agency, it shall be assumed, absent a request for a specific extension of time, that such agency or person has no comment to make. Although the lead agency need not respond to late comments, the lead agency may choose to respond to them.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348. Formerly Section 15162.

§ 15208. Retention and Availability of Comments.

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or negative declaration under preparation shall also be considered and kept on file.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People* v. *County of Kern* (1974) 39 Cal. App. 3d 830.

§ 15209. Comments on Initiative of Public Agencies.

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21104 and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

§ 15220. General.

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.6 and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91–190 as amended, 42 U.S.C.A. 4321–4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500–1508.

HISTORY

1. New Article 14 (Sections 15220–15228) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15221. NEPA Document Ready Before CEQA Document.

(a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur:

(1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and

(2) The EIS or finding of no significant impact complies with the provisions of these guidelines.

(b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

§ 15222. Preparation of Joint Documents.

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR–EIS or negative declaration–finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

§ 15223. Consultation with Federal Agencies.

When it plans to use an EIS or finding of no significant impact or to prepare such a document jointly with a federal agency, the lead agency shall consult as soon as possible with the federal agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code.

§ 15224. Time Limits.

Where a project will be subject to both CEQA and the National Environmental Policy Act, the one year time limit and the 105 day time limit may be waived pursuant to Section 15110.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.6, Public Resources Code.

§ 15225. Circulation of Documents.

(a) Where the federal agency circulated the EIS or finding of no significant impact for public review as broadly as state or local law may require and gave notice meeting the standards in Section 15072(a) or 15087(a), the lead agency under CEQA may use the federal document in the place of an EIR or negative declaration without recirculating the federal document for public review. One review and comment period is enough. Prior to using the federal document in this situation, the lead agency shall give notice that it will use the federal document in the place of an EIR or negative declaration and that it believes that the federal document meets the requirements of CEQA. The notice shall be given in the same manner as a notice of the public availability of a draft EIR under Section 15087.

(b) If an EIS has been prepared and filed pursuant to NEPA on the closure and reuse of a military base and the Lead Agency decides that the EIS does not fully meet the requirements of CEQA or has not been circulated for public review as state and local law may require, the Lead Agency responsible for preparation of an EIR for a reuse plan for the same base may proceed in the following manner:

(1) Prepare and circulate a notice of preparation pursuant to Section 15082. The notice shall include a description of the reuse plan, a copy of the EIS, an address to which to send comments, and the deadline for submitting comments. The notice shall state that the lead agency intends to utilize the EIS as a draft EIR and requests comments on whether the EIS provides adequate information to serve as a draft EIR and what specific additional information, if any, is necessary.

(2) Upon the close of the comment period, the lead agency may proceed with preparation and circulation for comment of the draft EIR for the reuse plan. To the greatest extent feasible, the lead agency shall avoid duplication and utilize the EIS or information in the EIS as all or part of the draft EIR. The EIR shall be completed in compliance with the provisions of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5, 21083.8 and 21092, Public Resources Code.

HISTORY

1. New subsection (a) designator, new subsections (b)–(b)(2), and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15226. Joint Activities.

State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Policy Act. Such cooperation should, to the fullest extent possible, include:

(a) Joint planning processes,

(b) Joint environmental research and studies,

(c) Joint public hearings,

(d) Joint environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2.

§ 15227. State Comments on a Federal Project.

When a state agency officially comments on a proposed federal project which may have a significant effect on the environment, the comments shall include or reference a discussion of the material specified in Section 15126. An EIS on the federal project may be referenced to meet the requirements of this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21101, Public Resources Code.

§ 15228. Where Federal Agency Will Not Cooperate.

Where a federal agency will not cooperate in the preparation of joint document and will require separate NEPA compliance for the project at a later time, the state or local agency should persist in efforts to cooperate with the federal agency. Because NEPA expressly allows federal agencies to use environmental documents prepared by an agency of statewide jurisdiction, a local agency should try to involve a state agency in helping prepare an EIR or negative declaration for the project. In this way there will be a greater chance that the federal agency may later use the CEQA document and not require the applicant to pay for preparation of a second document to meet NEPA requirements at a later time.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.5, Public Resources Code; Section 102(2)(D) of NEPA, 42 U.S.C.A. 4322(2)(D).

§ 15229. Baseline Analysis for Military Base Reuse Plan EIRs.

When preparing and certifying an EIR for a plan for the reuse of a military base, including when utilizing an Environmental Impact Statement pursuant to Section 21083.5 of the Public Resources Code, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8 of the Public Resources Code, the determination of whether the reuse plan may have a significant effect on the environment may, at the discretion of the lead agency, be based upon the physical conditions which were present at the time that the federal decision for the closure or realignment of the base or reservation became final. These conditions shall be referred to as the "baseline physical conditions." Impacts which do not exceed the baseline physical conditions shall not be considered significant.

(a) Prior to circulating a draft EIR pursuant to the provisions of this Section, the lead agency shall do all of the following, in order:

(1) Prepare proposed baseline physical conditions, identify pertinent responsible and trustee agencies and consult with those agencies prior to the public hearing required by subdivision (a)(2) as to the application of their regulatory authority and permitting standards to the proposed baseline physical conditions, the proposed reuse plan, and specific, planned future nonmilitary land uses of the base or reservation. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed baseline physical conditions and the proposed reuse plan and to submit their comments to the lead agency.

(2) Hold a public hearing at which is discussed the federal EIS prepared for, or being prepared for, the closure or realignment of the military base or reservation. The discussion shall include the significant effects on the environment, if any, examined in the EIS, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency shall specify whether it will adopt any of the baseline physical conditions for the reuse plan EIR and identify those conditions. The lead agency shall specify particular baseline physical conditions, if any, which it will examine in greater detail than they were examined in the EIS. Notice of the hearing shall be given pursuant to Section 15087. The hearing may be continued from time to time.

(3) Prior to the close of the hearing, the lead agency shall do all of the following:

(A) Specify the baseline physical conditions which it intends to adopt for the reuse plan EIR, and specify particular physical conditions, if any, which it will examine in greater detail than were examined in the EIS.

(B) State specifically how it intends to integrate its discussion of the baseline physical conditions in the EIR with the reuse planning process, taking into account the adopted environmental standards of the community, including but not limited to, the adopted general plan, specific plan or redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, air quality management plans, integrated waste management plans, and county hazardous waste management plans.

(C) State the specific economic or social reasons, including but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate–income housing, and economic continuity which support selection of the baseline physical conditions.

(b) An EIR prepared under this section should identify any adopted baseline physical conditions in the environmental setting section. The baseline physical conditions should be cited in discussions of effects. The no–project alternative analyzed in an EIR prepared under this section shall discuss the conditions on the base as they exist at the time of preparation, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(c) All public and private activities taken pursuant to or in furtherance of a reuse plan for which an EIR was prepared and certified pursuant to this section shall be deemed to be a single project. A subsequent or supplemental EIR shall be required only if the lead agency determines that any of the circumstances described in Section 15162 or 15163 exist.

(d) Limitations:

(1) Nothing in this section shall in any way limit the scope of review or determination of significance of the presence of hazardous or toxic wastes, substances, and materials, including but not limited to, contaminated soils and groundwater. The regulation of hazardous or toxic wastes, substances, and materials shall not be constrained by this section.

(2) This section does not apply to hazardous waste regulation and remediation projects undertaken pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or pursuant to the Porter–Cologne Water Quality Control Act (Water Code Section 13000, et seq.)

(3) All subsequent development at the military base or reservation shall be subject to all applicable federal, state, or local laws, including but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

(e) "Reuse plan" means the initial plan for the reuse of military base adopted by a local government, including a redevelopment agency or joint powers authority, in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document. For purposes of this section, a reuse plan also shall include a statement of development policies, a diagram or diagrams illustrating its provisions, including a designation of the proposed general distribution, location, and development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads, and other transportation facilities, infrastructure, and other categories of proposed uses, whether public or private.

(f) This section may be applied to any reuse plan EIR for which a notice of preparation is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, but only if the EIR is completed and certified within five years from the date that the federal record of decision was rendered.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

Article 15. Litigation

§ 15230. Time Limits and Criteria.

Litigation under CEQA must be handled under the time limits and criteria described in Sections 21167 et seq. of the Public Resources Code and Section 151 12 of these guidelines in addition to provisions in this article.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167 et seq., Public Resources Code.

HISTORY

1. New Article 15 (Sections 15230–15233) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15231. Adequacy of EIR or Negative Declaration for Use by Lead and Responsible Agencies.

A final EIR prepared by a lead agency or a negative declaration adopted by a lead agency shall be conclusively presumed to comply with CEQA for purposes of use by responsible agencies which were consulted pursuant to Sections 15072 or 15082 unless one of the following conditions occurs:

(a) The EIR or negative declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or

(b) A subsequent EIR is made necessary by Section 15162 of these guidelines.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21166, 21167.2 and 21167.3, Public Resources Code.

HISTORY

1. Amendment of section heading filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15232. Request for Hearing.

In a writ of mandate proceeding challenging approval of a project under CEQA, the petitioner shall, within 90 days of filing the petition, request a hearing or otherwise be subject to dismissal on the court's own motion or on the motion of any party to the suit.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.4, Public Resources Code.

§ 15233. Conditional Permits.

If a lawsuit is filed challenging an EIR or negative declaration for noncompliance with CEQA, responsible agencies shall act as if the EIR or negative declaration complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action contained in Government Code Section 65952.

(a) If an injunction or a stay has been granted in the lawsuit prohibiting the project from being carried out, the responsible agency shall have authority only to disapprove the project or to grant a conditional approval of the project. A conditional approval shall constitute permission to proceed with a project only when the court action results in a final determination that the EIR or negative declaration does comply with the provisions of CEQA (Public Resources Code Section 21167.3a).

(b) If no injunction or stay is granted in the lawsuit, the responsible agency shall assume that the EIR or negative declaration fully meets the requirements of CEQA. The responsible agency shall approve or disapprove the project within the time limits described in Article 8, commencing with Section 15100, of these guidelines and described in Government Code Section 65952. An approval granted by a responsible agency in this situation provides only permission to proceed with the project at the applicant's risk prior to a final decision in the lawsuit (Public Resources Code Section 21167.3b).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21167.3, Public Resources Code; *Kriebel* v. *City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

§ 15240. EIR Monitor.

The Secretary for Resources may provide for publication of a bulletin entitled "California EIR Monitor" on a subscription basis to provide public notice of amendments to the guidelines, the completion of draft EIRs, and other matters as deemed appropriate. Inquiries and subscription requests should be sent to the following address:

SECRETARY FOR RESOURCES
ATTENTION: CALIFORNIA EIR MONITOR
1416 NINTH STREET, ROOM 1311
SACRAMENTO, CALIFORNIA 95814

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21088, Public Resources Code.

HISTORY

1. New Article 16 (Section 15240) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

Article 17. Exemption for Certified State Regulatory Programs

§ 15250. General.

Section 21080.5 of the Public Resources Code provides that a regulatory program of a state agency shall be certified by the Secretary for Resources as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies if the Secretary finds that the program meets the criteria contained in that code section. A certified program remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. This article provides information concerning certified programs.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New Article 17 (Sections 15250–15253) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15251. List of Certified Programs.

The following programs of state regulatory agencies have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5:

(a) The regulation of timber harvesting operations by the California Department of Forestry and the State Board of Forestry pursuant to Chapter 8, commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code.

(b) The regulatory program of the Fish and Game Commission pursuant to the Fish and Game Code.

(c) The regulatory program of the California Coastal Commission and regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000) of the Public Resources Code.

(d) That portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California.

(e) The regulatory program of the State Board of Forestry in adopting, amending, or repealing standards, rules, regulations, or plans under the Z'berg–Nejedly Forest Practice Act, Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(f) The program of the California Coastal Commission involving the preparation, approval, and certification of local coastal programs as provided in Sections 30500 through 30522 of the Public Resources Code.

(g) The Water Quality Control (Basin)/208 Planning Program of the State Water Resources Control Board and the Regional Water Quality Control Boards.

(h) The permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer–Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

(i) The pesticide regulatory program administered by the Department of Pesticide Regulation and the county agricultural commissioners insofar as the program consists of:

(1) The registration, evaluation, and classification of pesticides.

(2) The adoption, amendment, or repeal of regulations and standards for the licensing and regulation of pesticide dealers and pest control operators and advisors.

(3) The adoption, amendment, or repeal of regulations for standards dealing with the monitoring of pesticides and of the human health and environmental effects of pesticides.

(4) The regulation of the use of pesticides in agricultural and urban areas of the state through the permit system administered by the county agricultural commissioners.

(j) The regulations of weather resources management projects through the issuance of operating permits by the State Department of Water Resources pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 et seq.).

(k) The power plant site certification program of the State Energy Resources Conservation and Development Commission under Chapter 6 of the Warren–Alquist Act, commencing with Public Resources Code Section 25500.

(l) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(m) That portion of the regulatory program of the South Coast Air Quality Management District which involves the adoption, amendment, and repeal of regulations pursuant to the provisions of the Health and Safety Code.

(n) The program of the Delta Protection Commission involving the preparation and adoption of a Resource Management Plan for the Sacramento–San Joaquin Delta (Pub. Resources Code § 29760 ff.), and the Commission's review and action on general plan amendments proposed by local governments to make their plans consistent with the provisions of the Commission's Resource Management Plan (Pub. Resources Code § 29763.5).

(o) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(p) The program of the Department of Fish and Game implementing the incidental take permit application process under the California Endangered Species Act ("CESA"), Fish and Game Code sections 2080 and 2081, and specifically the regulation governing the Department of Fish and Game's role as a "lead agency" when issuing incidental take permits, found at California Code of Regulations, Title 14, section 783.5(d).

NOTE: Authority cited: Sections 21083 and 21080.5, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

HISTORY

1. New subsection (m) filed 3–1–89; operative 3–31–89 (Register 89, No. 10).
2. New subsection (n) filed 11–9–94; operative 12–9–94 (Register 94, No. 45).
3. New subsection (o) filed 8–27–98; operative 8–27–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
4. New subsection (p) and amendment of NOTE filed 3–29–99; operative 3–29–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 14).
5. Change without regulatory effect amending subsection (i) and NOTE filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15252. Substitute Document.

The document used as a substitute for an EIR or negative declaration in a certified program shall include at least the following items:

(a) A description of the proposed activity, and

(b) Either:

(1) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment, or

(2) A statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.5, Public Resources Code.

§ 15253. Use of an EIR Substitute by a Responsible Agency.

(a) An environmental analysis document prepared for a project under a certified program listed in Section 15251 shall be used by another agency granting an approval for the same project where the conditions in Subsection (b) have been met. In this situation, the certified agency shall act as lead agency, and the other permitting agencies shall act as responsible agencies using the certified agency's document.

(b) The conditions under which a public agency shall act as a responsible agency when approving a project using an environmental analysis document prepared under a certified program in the place of an EIR or negative declaration are as follows:

(1) The certified agency is the first agency to grant a discretionary approval for the project.

(2) The certified agency consults with the responsible agencies, but the consultation need not include the exchange of written notices.

(3) The environmental analysis document identifies:

(A) The significant environmental effects within the jurisdiction or special expertise of the responsible agency.

(B) Alternatives or mitigation measures that could avoid or reduce the severity of the significant environmental effects.

(4) Where written notices were not exchanged in the consultation process, the responsible agency was afforded the opportunity to participate in the review of the property by the certified agency in a regular manner designed to inform the certified agency of the concerns of the responsible agency before release of the EIR substitute for public review.

(5) The certified agency established a consultation period between the certified agency and the responsible agency that was at least as long as the period allowed for public review of the EIR substitute document.

(6) The certified agency exercised the powers of a lead agency by considering all the significant environmental effects of the project and making a finding under Section 15091 for each significant effect.

(c) Certified agencies are not required to adjust their activities to meet the criteria in Subsection (b). Where a certified agency does not meet the criteria in Subsection (b):

(1) The substitute document prepared by the agency shall not be used by other permitting agencies in the place of an EIR or negative declaration, and

(2) Any other agencies granting approvals for the project shall comply with CEQA in the normal manner. A permitting agency shall act as a lead agency and prepare an EIR or a negative declaration. Other permitting agencies, if any, shall act as responsible agencies and use the EIR or negative declaration prepared by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002.1(d), 21080.5 and 21165, Public Resources Code.

Article 18. Statutory Exemptions

§ 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b), Public Resources Code.

HISTORY

1. New Article 18 (Sections 15260–15277) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15261. Ongoing Project.

(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exists:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project; provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on–going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21169, 21170 and 21171, Public Resources Code; *County of Inyo* v. *Yorty*, 32 Cal. App. 3d 795.

§ 15262. Feasibility and Planning Studies.

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21102 and 21150, Public Resources Code.

§ 15263. Discharge Requirements.

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a negative declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 13389, Water Code.

§ 15264. Timberland Preserves.

Local agencies are exempt from the requirement to prepare an EIR or negative declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 51119, Government Code.

§ 15265. Adoption of Coastal Plans and Programs.

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

(1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or

(2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long–range land use development plan.

(b) CEQA shall apply to the certification of a local coastal program or long–range land use development plan by the California Coastal Commission.

(c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local coastal

programs and long-range land use development plans has been certified under Section 21080.5, Public Resources Code. See Section 15192.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.9, Public Resources Code.

§ 15266. General Plan Time Extension.

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(a), Public Resources Code.

§ 15267. Financial Assistance to Low or Moderate Income Housing.

CEQA does not apply to actions taken by the Department of Housing and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10(b), Public Resources Code.

§ 15268. Ministerial Projects.

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

§ 15269. Emergency Projects.

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section180.2 of the Streets and Highways Code, Section 180 et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15270. Projects Which Are Disapproved.

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation f the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or negative declaration prepared for his project prior to the lead agency's disapproval of the project after normal evaluation and processing.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(5), Public Resources Code.

§ 15271. Early Activities Related to Thermal Power Plants.

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

(1) The State Energy Resources Conservation and Development Commission,

(2) The Public Utilities Commission, or

(3) The city or county in which the power plant and related facility would be located.

(b) The EIR, negative declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 15080(b)(6), Public Resources Code.

§ 15272. Olympic Games.

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the lead agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(7), Public Resources Code.

§ 15273. Rates, Tolls, Fares, and Charges.

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3)Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra–city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(8), Public Resources Code.

§ 15274. Family Day Care Homes.

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in–home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in–home care for up to eight children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code.

HISTORY

1. Amendment of section heading, repealer and new section, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Change without regulatory effect amending section filed 2–1–2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15275. Specified Mass Transit Projects.

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high–occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(11), (12), and (13), Public Resources Code.

§ 15276. Transportation Improvement and Congestion Management Programs.

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080(b)(13), Public Resources Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15277. Projects Located Outside California.

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an environmental impact statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Section 21080(b)(1.5), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

§ 15278. Application of Coatings.

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10–day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Chapter 1131, Statutes of 1993, Section 1.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15279. Housing for Agricultural Employees.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined below, provided the development is either:

(1) Affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, there is no public financial assistance for the development project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower–income households for a period of at least 15 years; or

(2) Affordable to low and moderate–income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government

Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, there is public financial assistance for the project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to low and moderate-income households for a period of at least 15 years.

(b) The development must also meet all the following criteria:

(1) It is consistent with the applicable city, county, or city and county general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning, as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) If the project is proposed in an urbanized area, it does not exceed 45 dwelling units, or if it consists of dormitories, barracks or other group living facilities houses not more than 45 agricultural employees, and its site is adjacent on at least two sides to land that has been previously developed.

(4) If the project is proposed in a nonurbanized area, its site is zoned for general agricultural use and the project consists of not more than 20 dwelling units or, if it consists of dormitories, barracks or other group living facilities, it houses not more than 20 agricultural employees.

(5) Its site is not more than five acres in area, except that a project located in an area with a population density of at least 1000 persons per square mile shall not be more than two acres in area.

(6) Its site is, or can be, adequately served by utilities.

(7) Its site has no value as wildlife habitat.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962 of the Government Code.

(9) It will not involve the demolition of, or any substantial adverse change in, any structure that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(c) As used in this section, "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(d) As used in this section, "urbanized area" means either of the following:

(1) an area with a population density of at least 1000 persons per square mile; or

(2) an area with a population density of less than 1000 persons per square mile that is identified as an urban area in the general plan adopted by the applicable city, county, or city and county and was not designated at the time the application was deemed complete as an area reserved for future urban growth.

(e) This section does not apply if the public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.10, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15280. Lower-Income Housing Projects.

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area, provided that it is either:

(1) Affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(b) The development must also meet all the following criteria:

(1) It is consistent with the local jurisdiction's general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) Its site has been previously developed or is currently developed with urban uses, or the immediately contiguous properties surrounding the site are or have been previously developed with urban uses.

(4) Its site is not more than two acres in area.

(5) Its site is, or can be, adequately served by utilities.

(6) Its site has no value as wildlife habitat.

(7) It will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962.5 of the Government Code, and the site has been subject to an assessment by a California registered environmental assessor to determine both the presence of hazardous contaminants, if any, and the potential for exposure of site occupants to significant health hazards from nearby properties and activities.

(c) For purposes of this section, "urbanized area" means an area that has a population density of at least 1000 persons per square mile.

(d) If hazardous contaminants are found on the site, they must be removed or any significant effects mitigated to a level of insignificance in order to apply this exemption. If a potential for exposure to significant health hazards from nearby properties and activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance in order to apply this exemption. Any removal or mitigation to insignificance must be completed prior to any residential occupancy of the project.

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.14, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending subsection (a) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15281. Air Quality Permits.

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.24, Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subsection summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries

below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

(a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.

(b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.

(c) The lease or purchase of the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.

(d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.

(e) The construction of housing or neighborhood commercial facilities in an urbanized area pursuant to the provisions of Section 21080.7 of the Public Resources Code.

(f) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.

(g) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.

(h) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.

(i) The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

(j) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.

(k) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(l) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.

(m) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code § 29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments made for consistency with the Delta Protection Commission's regional plan.

(n) Minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(o) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(p) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(q) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(r) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(s) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(t) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(u) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(v) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(w) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735 and 44203(g), Public Resources Code.

HISTORY

1. New section filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15283. Housing Needs Allocation.

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65584, Government Code.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15284. Pipelines.

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

(1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one-half mile at a time.

(2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.

(4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.

(5) Project activities take place within an existing right-of-way and that right-of-way will be restored to its pre-project condition upon completion of the project.

(6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(c) When the lead agency determines that a project meets all of the criteria of subdivisions (a) and (b), the party undertaking the project shall all of the following:

(1) Notify in writing all responsible and trustee agencies, as well as any public agency with environmental, public health protection, or emergency response authority, of the lead agency's invocation of this exemption.

(2) Mail notice of the project to the last known name and address of all organizations and individuals who have previously requested such notice and notify the public in the affected area by at least one of the following procedures:

(A) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice on and off site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The notice shall include a brief description of the proposed project and its location, and the date, time, and place of any public meetings or hearings on the proposed project. This notice may be combined with the public notice required under other law, as applicable, but shall meet the preceding minimum requirements.

(3) In the case of private rights–of–way over private property, receive from the underlying property owner permission for access to the property.

(4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene–Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endan-ed Species Act (Fish and Game Code Section 2050, et seq.), other icable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.23, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15285. Transit Agency Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken on or after July 1,1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit ncy shall respond within 30 days at a regular public meeting to sug-lions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short–term investments, and unrestricted short–term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, worker's compensation reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation Authority.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080 and 21080.32, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 19. Categorical Exemptions

§ 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29).
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15300.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

§ 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will

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(2) The making of findings as required by Sections 15091 and 15093.

(c) Where an advisory body such as a planning commission is required to make a recommendation on a project to the decisionmaking body, the advisory body shall also review and consider the EIR or negative declaration in draft or final form.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21082, Public Resources Code; *Kleist v. City of Glendale* (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

§ 15040. Authority Provided by CEQA.

(a) CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws.

(b) CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.

(c) Where another law grants an agency discretionary powers, CEQA supplements those discretionary powers by authorizing the agency to use the discretionary powers to mitigate or avoid significant effects on the environment when it is feasible to do so with respect to projects subject to the powers of the agency. Prior to January 1, 1983, CEQA provided implied authority for an agency to use its discretionary powers to mitigate or avoid significant effects on the environment. Effective January 1, 1983, CEQA provides express authority to do so.

(d) The exercise of the discretionary powers may take forms that had not been expected before the enactment of CEQA, but the exercise must be within the scope of the power.

(e) The exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.

NOTE: Authority cited: Sections 21083 and 2187, Public Resources Code. Reference: Sections 21000, 21001, 21002, 21002.1 and 21004, Public Resources Code; Section 4, Chapter 1438, Statutes of 1982; *Golden Gate Bridge, Etc., Dist.* v. *Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F.* v. *Mathews*, 410 F. Supp. 336, 339 (D.D.C., 1976); *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Pinewood Investors* v. *City of Oxnard* (1982) 133 Cal. App. 3d 1030.

HISTORY

1. Repealer of Article 3 (Sections 15010–15016) and new Article 3 (Sections 15040–15045) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1 and 18; 74, Nos. 3 and 4; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15041. Authority to Mitigate.

Within the limitations described in Section 15040:

(a) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

(b) When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.

(c) With respect to a project which includes housing development, a lead or responsible agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1 and 21085, Public Resources Code; *Golden Gate Bridge, Etc., District* v. *Muzzi* (1978) 83 Cal. App. 3d 707; and *Laurel Hills Homeowners Assn. v. City Council of City of Los Angeles* (1978) 83 Cal.App.3d 515.

HISTORY

1. Amendment of first paragraph, subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15042. Authority to Disapprove Projects.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A lead agency has broader authority to disapprove a project than does a responsible agency. A responsible agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the responsible agency would be called on to carry out or approve. For example, an air quality management district acting as a responsible agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *Friends of Mammoth* v. *Mono County*, 8 Cal. App 3d 247; *San Diego Trust and Savings Bank* v. *Friends of Gill*, 121 Cal. App. 3d 203.

§ 15043. Authority to Approve Projects Despite Significant Effects.

A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21002.1, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *San Diego Trust & Savings Bank* v. *Friends of Gill*, (1981) 121 Cal. App. 3d 203.

§ 15044. Authority to Comment.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001, 21002.1, 21104 and 21153, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15045. Fees.

(a) For a project to be carried out by any person or entity other than the lead agency, the lead agency may charge and collect a reasonable fee from the person or entity proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project. Litigation expenses, costs and fees incurred in actions alleging noncompliance with CEQA are not recoverable under this section.

(b) Public agencies may charge and collect a reasonable fee from members of the public for a copy of an environmental document not to exceed the actual cost of reproducing a copy.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21089 and 21105, Public Resources Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 4. Lead Agency

§ 15050. Lead Agency Concept.

(a) Where a project is to be carried out or approved by more than public agency, one public agency shall be responsible for preparing EIR or negative declaration for the project. This agency shall be called the lead agency.

(b) Except as provided in subsection (c), the decisionmaking body of each responsible agency shall consider the lead agency's EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project.

(c) The determination of the lead agency of whether to prepare an EIR or a negative declaration shall be final and conclusive for all persons, including responsible agencies, unless:

(1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,

(2) Circumstances or conditions change as provided in Section 15162, or

(3) A responsible agency becomes a lead agency under Section 15052.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.1, 21165 and 21167.2, Public Resources Code.

HISTORY

1. Repealer of Article 4 (Sections 15020–15043) and new Article 4 (Sections 15050–15053) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; 74, Nos. 13 and 26; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15052. Shift in Lead Agency Designation.

(a) Where a responsible agency is called on to grant an approval for a project subject to CEQA for which another public agency was the appropriate lead agency, the responsible agency shall assume the role of the lead agency when any of the following conditions occur:

(1) The lead agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(2) The lead agency prepared environmental documents for the project but the following conditions occur:

(A) A subsequent EIR is required pursuant to Section 15162,

(B) The lead agency has granted a final approval for the project, and

(C) The statute of limitations for challenging the lead agency's action under CEQA has expired.

(3) The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Sections 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(b) When a responsible agency assumes the duties of a lead agency under this section, the time limits applicable to a lead agency shall apply to the actions of the agency assuming the lead agency duties.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code.

§ 15053. Designation of Lead Agency by Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the lead agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to OPR. If an agreement cannot be reached, any public agency, or the applicant if a private project is involved, may submit the dispute to OPR for resolution.

(b) OPR shall designate a lead agency within 21 days after receiving a completed request to resolve a dispute.

(c) Regulations adopted by OPR for resolving lead agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(d) Designation of a lead agency by OPR shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21165, Public Resources Code; and California Code of Regulations, Title 14, Sections 16000–16041.

HISTORY

1. Change without regulatory effect amending subsections (c) and (d) and amending NOTE filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

Article 5. Preliminary Review of Projects and Conduct of Initial Study

§ 15060. Preliminary Review.

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 5 (Sections 15050–15056) and new Article 5 (Sections 15060–15065) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, Nos. 1, 5 and 22; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15060.5. Preapplication Consultation.

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistant in the Trade and Commerce Agency for help in identifying interested agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.1, Public Resources Code.

HISTORY

1. New section filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15061. Review for Exemption.

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a notice of exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b) and 21152(b), Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68.

HISTORY

1. Amendment of subsection (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15062. Notice of Exemption.

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108 and 21152, Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsections (a)(2), (c)(1), (c)(2), (c)(3)(A) and (c)(3)(C) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. New subsection (c)(3) and subsection renumbering filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15063. Initial Study.

(a) Following preliminary review, the lead agency shall conduct an initial study to determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings.

However, an initial study is neither intended nor required to include the of detail included in an EIR.

Results.

) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with ng zoning, plans, and other applicable land use controls;

The name of the person or persons who prepared or participated in nitial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

HISTORY

1. Amendment filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of subsection (a)(2), new subsection (b)(3) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from con-

struction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street* v. *City of Hayward* (1980) 106 Cal. App. 3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100, Public Resources Code; *No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center* v. *County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry* v. *City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn.* v. *Regents of the University of California* (1993) 6 Cal.4th 1112; and *Communities for a Better Environment* v. *California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of section heading, section and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Repealer of subsection (i) and new subsections (i)(1)(A)–(i)(4) filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
3. Repealer of subsection (e), subsection relettering, new subsections (f)(7) and (i)(1)–(i)(5) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect amending subsections (g), (h)(1)(A)–(h)(1)(C) and (h)(2) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
5. Change without regulatory effect repealing subsections (h)–(h)(4) and (i)(4), relettering and renumbering subsections, amending newly designated subsection

Y(1) and amending NOTE filed 7-22-2003 pursuant to section 100, title 1, lifornia Code of Regulations (Register 2003, No. 30).

064.5. Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, ethod of construction, or represents the work of an important cre- individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an 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.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) 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 for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the 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.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to de-

brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subsection (a) shall be supported by substantial evidence in the record.

(c) The finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subsection (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21081.6, Public Resources Code; *Laurel Hills Homeowners Association* v. *City Council* (1978) 83 Cal. App. 3d 515; *Cleary* v. *County of Stanislaus* (1981) 118 Cal. App. 3d 348; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (a)(3), new subsections (d) and (e), and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsection (c), new subsection (f) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15092. Approval.

(a) After considering the final EIR and in conjunction with making findings under Section 15091, the lead agency may decide whether or how to approve or carry out the project.

(b) A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either:

(1) The project as approved will not have a significant effect on the environment, or

(2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21081 and 21159.26, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. App. 3d 247; *San Francisco Ecology Center* v. *City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors*, (1977) 71 Cal. App. 3d 84; *Laurel Hills Homeowners Association* v. *City Council*, (1978) 83 Cal. App. 3d 515.

HISTORY

1. Change without regulatory effect amending NOTE filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002 and 21081, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco* (1975) 48 Cal. App. 3d 584; *City of Carmel-by-the-Sea* v. *Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of subsections (b) and (c) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15094. Notice of Determination.

(a) The lead agency shall file a notice of determination within 5 working days after approval of the project by the lead agency. The notice shall include:

(1) An identification of the project including its common name where possible and its location.

(2) A brief description of the project.

(3) The date when the agency approved the project.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(b) If a state agency is the lead agency, the notice of determination shall be filed with OPR.

(c) If a local agency is the lead agency, the notice of determination shall be filed with the county clerk of the county or counties in which the project will be located. If the project requires discretionary approval from a state agency, the notice of determination shall also be filed with OPR.

(d) A notice of determination filed with the county clerk is available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 9 months.

(c) A notice of determination filed with OPR is available for public inspection and shall be posted for a period of at least 30 days.

The filing of the notice of determination and the posting of such notice starts a 30–day statute of limitations on court challenges to the approval under CEQA.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association v. City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Amendment of subsections (b) and (c) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).
2. Amendment of subsection (a), new subsections (d) and (e), subsection relettering, and amendment of newly designated subsection (f) filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15095. Disposition of a Final EIR.

The lead agency shall:

(a) File a copy of the final EIR with the appropriate planning agency of any city, county, or city and county where significant effects on the environment may occur.

(b) Include the final EIR as part of the regular project report which is used in the existing project review and budgetary process if such a report is used.

(c) Retain one or more copies of the final EIR as public records for a reasonable period of time.

(d) Require the applicant to provide a copy of the certified, final EIR to each responsible agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21105, 21151 and 21165, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

§ 15096. Process for a Responsible Agency.

(a) General. A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. This section identifies the special duties a public agency will have when acting as a responsible agency.

(b) Response to Consultation. A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project. By this means, the responsible agency will ensure that the documents it will use will comply with CEQA.

(1) In response to consultation, a responsible agency shall explain its reasons for recommending whether the lead agency should prepare an EIR or negative declaration for a project. Where the responsible agency disagrees with the lead agency's proposal to prepare a negative declaration for a project, the responsible agency should identify the significant environmental effects which it believes could result from the project and recommend either that an EIR be prepared or that the project be modified to eliminate the significant effects.

(2) As soon as possible, but not longer than 30 days after receiving a notice of preparation from the lead agency, the responsible agency shall send a written reply by certified mail or any other method which provides the agency with a record showing that the notice was received. The reply shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead agency shall include this information in the EIR.

(c) Meetings. The responsible agency shall designate employees or representatives to attend meetings requested by the lead agency to discuss the scope and content of the EIR.

(d) Comments on Draft EIRs and Negative Declarations. A responsible agency should review and comment on draft EIRs and negative declarations for projects which the responsible agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a negative declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.

(e) Decision on Adequacy of EIR or Negative Declaration. If a responsible agency believes that the final EIR or negative declaration prepared by the lead agency is not adequate for use by the responsible agency, the responsible agency must either:

(1) Take the issue to court within 30 days after the lead agency files a notice of determination;

(2) Be deemed to have waived any objection to the adequacy of the EIR or negative declaration;

(3) Prepare a subsequent EIR if permissible under Section 15162; or

(4) Assume the lead agency role as provided in Section 15052(a)(3).

(f) Consider the EIR or Negative Declaration. Prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR or negative declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

(g) Adoption of Alternatives or Mitigation Measures.

(1) When considering alternatives and mitigation measures, a responsible agency is more limited than a lead agency. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.

(2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment. With respect to a project which includes housing development, the responsible agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation.

(h) Findings. The responsible agency shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 if necessary.

(i) Notice of Determination. The responsible agency should file a notice of determination in the same manner as a lead agency under Section 15075 or 15094 except that the responsible agency does not need to state that the EIR or negative declaration complies with CEQA. The responsible agency should state that it considered the EIR or negative declaration as prepared by a lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1 and 21002.1(b) and (d), Public Resources Code.

HISTORY

1. Amendment of subsections (b) and (d) filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15097. Mitigation Monitoring or Reporting.

(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan–level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alterna-

tive. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

(1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.

(2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

(3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.

(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

(1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.

(2) The responsibilities of the project proponent.

(3) Agency guidelines for preparing monitoring or reporting programs.

(4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.

(5) Enforcement procedures for noncompliance, including provisions for administrative appeal.

(6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located. Each transportation planning agency shall adopt guidelines for the submittal of such information.

NOTE: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21081.6 and 21081.7, Public Resources Code.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

Article 8. Time Limits

§ 15100. General.

(a) Public agencies shall adopt time limits to govern their implementation of CEQA consistent with this article.

(b) Public agencies should carry out their responsibilities for preparing and reviewing EIRs within a reasonable period of time. The requirement for the preparation of an EIR should not cause undue delays in the processing of applications for permits or other entitlements to use.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000–21176, Public Resources Code.

HISTORY

1. Renumbering and amendment of former Article 8 (Sections 15100–15129) to Article 19 (Sections 15300–15329) and new Article 8 (Sections 15100–15112) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Register 82, No. 2.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).

§ 15101. Review of Application for Completeness.

A lead agency or responsible agency shall determine whether an application for a permit or other entitlement for use is complete within 30 days from the receipt of the application except as provided in Section 15111. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30th day.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21083, Public Resources Code; and Section 65943, Government Code.

§ 15102. Initial Study.

The lead agency shall determine within 30 days after accepting an application as complete whether it intends to prepare an EIR or a negative declaration or use a previously prepared EIR or negative declaration except as provided in Section 15111. The 30 day period may be extended 15 days upon the consent of the lead agency and the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.2, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15103. Response to Notice of Preparation.

Responsible agencies and trustee agencies shall provide a response to a notice of preparation to the lead agency within 30 days after receipt of the notice. If a responsible agency fails to reply within the 30 days with either a response or a well justified request for additional time, the lead agency may assume that the responsible agency has no response and any ignore a late response.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

HISTORY

1. Amendment filed 1–30–86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15104. Convening of Meetings.

The lead agency shall convene a meeting with agency representatives to discuss the scope and content of the environmental information a responsible agency will need in the EIR as soon as possible but no later than 30 days after receiving a request for the meeting. The meeting may be requested by the lead agency, a responsible agency, a trustee agency, or the project applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.4, Public Resources Code.

05. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

(a) The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.

(b) The public review period for a proposed negative declaration or mitigated negative declaration shall be not less than 20 days. When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period, not less than 20 days, is approved by the State Clearinghouse.

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.

(d) A shortened Clearinghouse review period may be granted in accordance with the provisions of Appendix K and the following principles:

(1) A shortened review shall not be granted for any proposed project of statewide, areawide, or regional environmental significance.

(2) Requests for shortened review periods shall be submitted to the Clearinghouse in writing by the decision-making body of the lead agency, or a representative authorized by ordinance, resolution, or delegation of the decision-making body.

(3) The lead agency has contacted responsible and trustee agencies and they have agreed to the shortened review period.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People* v. *County of* [illegible]9 Cal. App. 3d 830.

HISTORY

[illegible]endment of section heading, section and NOTE filed 5-27-97; operative [illegible]7-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Change without regulatory effect amending subsection (d) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15106. Review by State Agencies.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

HISTORY

1. Repealer filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

§ 15107. Completion of Negative Declaration for Certain Private Projects.

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

HISTORY

1. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15108. Completion and Certification of EIR.

With a private project, the lead agency shall complete and certify the final EIR as provided in Section 15090 within one year after the date when the lead agency accepted the application as complete. Lead agency [illegible]dures may provide that the one-year time limit may be extended [illegible] for a period of not more than 90 days upon consent of the lead [illegible]cy and the applicant.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; and Government Code Section 65950.

§ 15109. Suspension of Time Periods.

An unreasonable delay by an applicant in meeting requests by the lead agency necessary for the preparation of a negative declaration or an EIR shall suspend the running of the time periods described in Sections 15107 and 15108 for the period of the unreasonable delay. Alternatively, an agency may disapprove a project application where there is unreasonable delay in meeting requests. The agency may allow a renewed application to start at the same point in the process where the application was when it was disapproved.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *Carmel Valley View, Ltd.* v. *Maggini*, 91 Cal. App. 3d 318.

§ 15110. Projects with Federal Involvement.

(a) At the request of an applicant, the lead agency may waive the one-year time limit for completing and certifying a final EIR or the 105-day period for completing a negative declaration if:

(1) The project will be subject to CEQA and to the National Environmental Policy Act,

(2) Additional time will be required to prepare a combined EIR-EIS or combined negative declaration-finding of no significant impact as provided in Section 15221, and

(3) The time required to prepare the combined document will be shorter than the time required to prepare the documents separately.

(b) The time limits for taking final action on a permit for a development project may also be waived where a combined EIR-EIS will be prepared.

(c) The time limits for processing permits for development projects under Government Code Sections 65950-65960 shall not apply if federal statutes or regulations require time schedules which exceed the state time limits. In this event, any state agencies involved shall make a final decision on the project within the federal time limits.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.6 and 21083.7, Public Resources Code; Sections 65951 and 65954, Government Code; Public Law 91-190 as amended, 42 U.S.C.A. 4321-4347.

HISTORY

1. Amendment of subsection (a)(2) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

§ 15111. Projects with Short Time Periods for Approval.

(a) A few statutes or ordinances require agencies to make decisions on permits within time limits that are so short that review of the project under CEQA would be difficult. To enable the lead agency to comply with both the permit statute and CEQA, the lead agency shall deem an application for a project not received for filing under the permit statute or ordinance until such time as progress toward completing the environmental documentation required by CEQA is sufficient to enable the lead agency to finish the CEQA process within the short permit time limit. This section will apply where all of the following conditions are met:

(1) The enabling legislation for a program, other than Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the lead agency to take action on an application within a specified period of time that is six months or less, and

(2) The enabling legislation provides that the project will become approved by operation of law if the lead agency fails to take any action within such specified time period, and

(3) The project involves the issuance of a lease, permit, license, certificate, or other entitlement for use.

(b) Examples of time periods subject to this section include but are not limited to:

(1) Action on a timber harvesting plan by the Director of Forestry within 15 days pursuant to Section 4582.7 of the Public Resources Code,

(2) Action on a permit by the San Francisco Bay Conservation and Development Commission within 90 days pursuant to Section 66632(f) of the Government Code, and

(3) Action on an oil and gas permit by the Division of Oil and Gas within 10 days pursuant to Sections 3203 or 3724 of the Public Resources Code.

(c) In any case described in this section, the environmental document shall be completed or certified and the decision on the project shall be made within the period established under the Permit Streamlining Act (Government Code Sections 65920, et seq.).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code; *N.R.D.C.* v. *Arcata National Corp.* (1976) 59 Cal. App. 3d 959.

HISTORY

1. Repealer of subsection (b)(1), subsection renumbering, amendment of subsection (c) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15112. Statutes of Limitations.

(a) CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act.

(b) The statute of limitations periods are not public review periods or waiting periods for the person whose project has been approved. The project sponsor may proceed to carry out the project as soon as the necessary permits have been granted. The statute of limitations cuts off the right of another person to file a court action challenging approval of the project after the specified time period has expired.

(c) The statute of limitations periods under CEQA are as follows:

(1) Where the public agency filed a notice of determination in compliance with Sections 15075 or 15094, 30 days after the filing of the notice and the posting on a list of such notices.

(2) Where the public agency filed a notice of exemption in compliance with Section 15062, 35 days after the filing of the notice and the posting on a list of such notices.

(3) Where a certified state regulatory agency files a notice of decision in compliance with Public Resources Code Section 21080.5(d)(2)(E), 30 days after the filing of the notice.

(4) Where the Secretary for Resources certifies a state environmental regulatory agency under Public Resources Code Section 21080.5, the certification may be challenged only during the 30 days following the certification decision.

(5) Where none of the other statute of limitations periods in this section apply, 180 days after either:

(A) The public agency's decision to carry out or approve the project, or

(B) Commencement of the project if the project is undertaken without a formal decision by the public agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21167, 21167.3 and 21080.5, Public Resources Code; *Kriebel* v. *City Council*, 112 Cal. App. 3d 693; *Citizens of Lake Murray Area Association* v. *City Council*, (1982) 129 Cal. App. 3d 436.

HISTORY

1. Change without regulatory effect amending subsection (c)(3) filed 7–22–2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

Article 9. Contents of Environmental Impact Reports

§ 15120. General.

(a) Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied. Each element must be covered, and when these elements are not separated into distinct sections, the document shall state where in the document each element is discussed.

(b) The EIR may be prepared as a separate document, as part of a general plan, or as part of a project report. If prepared as a part of the project report, it must still contain one separate and distinguishable section providing either analysis of all the subjects required in an EIR or as a minimum, a table showing where each of the subjects is discussed. When the lead agency is a state agency, the EIR shall be included as part of the regular project report if such a report is used in the agency's existing review and budgetary process.

(c) Draft EIRs shall contain the information required by Sections 15122 through 15131. Final EIRs shall contain the same information and the subjects described in Section 15132.

(d) No document prepared pursuant to this article that is available for public examination shall include a "trade secret" as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites and sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21100, 21105 and 21160, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 15140–15151) and new Article 9 (Sections 15120–15132) filed 7–13–83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 82, No. 2; 80, No. 19; 78, No. 5; 77, No. 1; 76, No. 41; 75, Nos. 1 and 18; and 73, No. 50.
2. Editorial correction of 7–13–83 order redesignating effective date to 8–1–83 filed 7–14–83 (Register 83, No. 29).
3. New subsection (d) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15121. Informational Document.

(a) An EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

(b) While the information in the EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the EIR by making findings under Section 15091 and if necessary by making a statement of overriding considerations under Section 15093.

(c) The information in an EIR may constitute substantial evidence in the record to support the agency's action on the project if its decision is later challenged in court.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code; *Carmel Valley View, Ltd.* v. *Board of Supervisors*, (1976) 58 Cal. App. 3d 817.

§ 15122. Table of Contents or Index.

An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15123. Summary.

(a) An EIR shall contain a brief summary of the proposed actions and its consequences. The language of the summary should be as clear and simple as reasonably practical.

(b) The summary shall identify:

(1) Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;

(2) Areas of controversy known to the lead agency including issues raised by agencies and the public; and

(3) Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.

(c) The summary should normally not exceed 15 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21061, Public Resources Code.

§ 15124. Project Description.

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the

ion makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision–making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal. App. 3d 185.

HISTORY

1. Amendment of subsections (b) and (d)(1)(B), new subsection (d)(1)(C) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15125. Environmental Setting.

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area–wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *E.P.I.C.* v. *County of El Dorado*, (1982) 131 Cal. App. 3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126. Consideration and Discussion of Environmental Impacts.

All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation. The subjects listed below shall be discussed as directed in Sections 15126.2, 15126.4 and 15126.6, preferably in separate sections or paragraphs of the EIR. If they are not discussed separately, the EIR shall include a table showing where each of the subjects is discussed.

(a) Significant Environmental Effects of the Proposed Project.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented.

(c) Significant Irreversible Environmental Changes Which Would be Involved in the Proposed Project Should it be Implemented.

(d) Growth–Inducing Impact of the Proposed Project.

(e) The Mitigation Measures Proposed to Minimize the Significant Effects.

(f) Alternatives to the Proposed Project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100 and 21081.6, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal. 3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

HISTORY

1. Amendment of subsection (d), repealer and new subsections (d)(1)–(4), amendment of subsection (d)(5), new subsections (d)(5)(A)–(B)3, designation of subsection (d)(5)(C) and amendment of NOTE filed 8–19–94; operative 9–19–94 (Register 94, No. 33).
2. Amendment of section heading, repealer of subsection (c), subsection relettering, and amendment of NOTE filed 5–27–97; operative 5–27–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of first paragraph, repealer and new subsections (a)–(f) and amendment of NOTE filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short–term and long–term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

(b) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the

project is being proposed, notwithstanding their effect, should be described.

(c) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified.

(d) Growth–Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. Of Calif* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.4. Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally–binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted 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, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

; Authority: Sections 21083 and 21087, Public Resources Code. Reference: ns 21002, 21003, 21100 and 21084.1, Public Resources Code; *Citizens of a Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Im- ment Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

HISTORY

1. New section filed 10–26–98; operative 10–26–98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15126.6. Consideration and Discussion of Alternatives to the Proposed Project.

(a) Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

(b) Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall fo- on alternatives to the project or its location which are capable of ing or substantially lessening any significant effects of the project, f these alternatives would impede to some degree the attainment of roject objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

(1) The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no proj- lternative is to allow decisionmakers to compare the impacts of ap- ing the proposed project with the impacts of not approving the pro- ed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

(2) The "no project" analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the environmentally superior alternative is the "no project" alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.

(3) A discussion of the "no project" alternative will usually proceed along one of two lines:

(A) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.

(B) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. Here the discussion would compare the environmental effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project under consideration would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed. In certain instances, the no project alternative means "no build" wherein the existing environmental setting is maintained. However, where failure to proceed with the project will not result in preservation of existing environmental conditions, the analysis should identify the practical result of the project's non–approval and not create and analyze a set of artificial assumptions that would be required to preserve the existing physical environment.

(C) After defining the no project alternative using one of these approaches, the lead agency should proceed to analyze the impacts of the no project alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

(1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

(2) Alternative locations.

(A) Key question. The key question and first step in analysis is whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. Only locations

that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

(B) None feasible. If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR. For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.

(C) Limited new analysis required. Where a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for projects with the same basic purpose, the lead agency should review the previous document. The EIR may rely on the previous document to help it assess the feasibility of potential project alternatives to the extent the circumstances remain substantially the same as they relate to the alternative. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 573).

(3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal. App.3d 274).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21002.1, 21003 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

§ 15127. Limitations on Discussion of Environmental Impact.

The information required by Section 15126.2(c) concerning irreversible changes, need be included only in EIRs prepared in connection with any of the following activities:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(b) The adoption by a local agency formation commission of a resolution making determinations; or

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100.1, Public Resources Code.

HISTORY

1. Amendment of first paragraph, subsection (c) and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Change without regulatory effect amending first paragraph filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).

§ 15128. Effects Not Found to Be Significant.

An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR. Such a statement may be contained in an attached copy of an initial study.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15129. Organizations and Persons Consulted.

The EIR shall identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21104 and 21153, Public Resources Code.

§ 15130. Discussion of Cumulative Impacts.

(a) An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in section 15065(c). Where a lead agency is examining a project with an incremental effect that is not "cumulatively considerable," a lead agency need not consider that effect significant, but shall briefly describe its basis for concluding that the incremental effect is not cumulatively considerable.

(1) As defined in Section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

(2) When the combined cumulative impact associated with the project's incremental effect and the effects of other projects is not significant, the EIR shall briefly indicate why the cumulative impact is not significant and is not discussed in further detail in the EIR. A lead agency shall identify facts and analysis supporting the lead agency's conclusion that the cumulative impact is less than significant.

(3) An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable.

(b) The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact. The following elements are necessary to an adequate discussion of significant cumulative impacts:

(1) Either:

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact. Any such planning document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(c) With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis.

(d) Previously approved land use documents such as general plans, specific plans, and local coastal plans may be used in cumulative impact analysis. A pertinent discussion of cumulative impacts contained in one

...re previously certified EIRs may be incorporated by reference pur-...to the provisions for tiering and program EIRs. No further cumula-...mpacts analysis is required when a project is consistent with a gener-...pecific, master or comparable programmatic plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed, as defined in section 15152(f), in a certified EIR for that plan.

(e) If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze that cumulative impact, as provided in Section15183(j).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083(b), 21093, 21094 and 21100, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal. App. 3d 397; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692; *Laurel Heights Homeowners Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Sierra Club v. Gilroy* (1990) 220 Cal.App.3d 30; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421; *Concerned Citizens of South Cent. Los Angeles v. Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826; *Las Virgenes Homeowners Fed'n v. County of Los Angeles* (1986) 177 Cal.App.3d 300; *San Joaquin Raptor/Wildlife Rescue Ctr v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Fort Mojave Indian Tribe v. Cal. Dept. Of Health Services* (1995) 38 Cal.App.4th 1574; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of section heading, new subsection (d) and amendment of NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
2. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
3. Change without regulatory effect amending subsection (d) filed 2-1-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 5).
4. Change without regulatory effect repealing subsection (a)(4), amending subsec-...(b)(1)(B), redesignating former subsection (b)(1)(B)1. as subsection (b)(2), ...aling former subsection (b)(1)(B)2., renumbering subsections and amend-... NOTE filed 7-22-2003 pursuant to section 100, title 1, California Code of ...gulations (Register 2003, No. 30).

§ 15131. Economic and Social Effects.

Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.

(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. As an additional example, if the construction of a road and the resulting increase in noise in an area disturbed existing religious practices in the area, the disturbance of the religious practices could be used to determine that the construction and use of the road and the resulting noise would be significant effects on the environment. The religious practices would need to be analyzed only to the extent to show that the increase in traffic and noise would conflict with the religious practices. Where an EIR uses economic or social effects to determine that a physical change is significant, the EIR shall explain the reason for determining that the effect is significant.

(c) Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21001(e) and (g), 21002, 21002.1, 21060.5, 21080.1, 21083(c) and 21100, Public Resources Code.

§ 15132. Contents of Final Environmental Impact Report.

The final EIR shall consist of:

(a) The Draft EIR or a revision of the draft.

(b) Comments and recommendations received on the Draft EIR either verbatim or in summary.

(c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

(d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.

(e) Any other information added by the lead agency.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

§ 15140. Writing.

EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003 and 21100, Public Resources Code.

HISTORY

1. Repealer of Article 10 (Sections 15160-15167) and new Article 10 (Sections 15140-15153) filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29). For prior history, see Registers 80, No. 19; 78, No. 5; 76, No. 41; 75, No. 1; and 73, No. 50.
2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

§ 15141. Page Limits.

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21100, Public Resources Code.

§ 15142. Interdisciplinary Approach.

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21000, 21001 and 21100, Public Resources Code.

§ 15143. Emphasis.

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15144. Forecasting.

Drafting an EIR or preparing a negative declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15145. Speculation.

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code; *Topanga Beach Renters Association* v. *Department of General Services* (1976) 58 Cal. App. 3d 712.

§ 15146. Degree of Specificity.

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15147. Technical Detail.

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15148. Citation.

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15149. Use of Registered Professionals in Preparing EIRs.

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the lead agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15150. Incorporation by Reference.

(a) An EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county.

(c) Where an EIR or negative declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in Subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

(1) A description of the environmental setting from another EIR.

(2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.

(3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061 and 21100, Public Resources Code.

§ 15151. Standards for Adequacy of an EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center* v. *City and County of San Francisco*, 48 Cal. App. 3d 584 (1975).

§ 15152. Tiering.

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not

'se the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(g) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Housing/neighborhood commercial facilities in an urbanized area (Section 15181).

(8) Projects consistent with community plan, general plan, or zoning (Section 15183).

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100 and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

HISTORY

1. Amendment of section and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending subsections (f)(3)(A)-(B) and repealing subsection (f)(3)(C) filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).

§ 15153. Use of an EIR from an Earlier Project.

(a) The lead agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the lead agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a lead agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the lead agency shall use the following procedures:

(1) The lead agency shall review the proposed project with an initial study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the lead agency believes that the EIR would meet the requirements of Subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The lead agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decisionmaker in the lead agency shall:

Exhibit E

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

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COMMISSION ON
STATE MANDATES

June 30, 2008

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 03-TC-17
California Environmental Quality Act (CEQA)

Dear Ms. Higashi:

On March 31, 2008, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the histories of the Titles 5 and 14, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimant, the list of registers and relevant section numbers, in the form of an amended attachment page to the CSM 2 form.

Sincerely,

Keith B. Petersen

C: Michael Johnston, Assistant Superintendent
Clovis Unified School District
1450 Herndon Avenue
Clovis, CA 93611-0599

Test Claim of Clovis Unified School District
03-TC-17 California Environmental Quality Act (CEQA)
Amended attachment to Form CSM 2 1/91

Copies of Statutes Cited

Chapter 1121, Statutes of 2002
Chapter 1052, Statutes of 2002
Chapter 1016, Statutes of 2002
Chapter 867, Statutes of 2001
Chapter 738, Statutes of 2000
Chapter 415, Statutes of 1997
Chapter 799, Statutes of 1996
Chapter 547, Statutes of 1996
Chapter 444, Statutes of 1996
Chapter 277, Statutes of 1996
Chapter 801, Statutes of 1995
Chapter 1294, Statutes of 1994
Chapter 1230, Statutes of 1994
Chapter 300, Statutes of 1994
Chapter 1131, Statutes of 1993
Chapter 1130, Statutes of 1993
Chapter 375, Statutes of 1993
Chapter 1212, Statutes of 1991
Chapter 1183, Statutes of 1991
Chapter 905, Statutes of 1991
Chapter 659, Statutes of 1989
Chapter 626, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 85, Statutes of 1985
Chapter 1514, Statutes of 1984
Chapter 571, Statutes of 1984
Chapter 967, Statutes of 1983
Chapter 1200, Statutes of 1977
Chapter 1312, Statutes of 1976
Chapter 222, Statutes of 1975
Chapter 1154, Statutes of 1972
Chapter 1433, Statutes of 1970

Public Resources Code Sections

21002.1	21092	21153
21003	21092.1	21154
21003.1	21092.2	21157
21080.09	21092.3	21157.1
21080.1	21092.4	21157.5
21080.3	21092.5	21158
21080.4	21092.6	21161
21081	21094	21165
21081.6	21100	21166
21082	21102	21167
21082.1	21150	21167.6
21082.2	21151	21167.6.5
21083	21151.2	21167.8
21083.2	21151.8	21168.9
21091	21152	

Education Code Section 17025

Government Code Sections 66031 and 66034

California Code of Regulations Registers

Register 75-01

Title 14, Sections:

15001	15005	15014	15022	15027
15028	15029.6	15035	15035.5	15037
15050	15052	15053	15060	15061
15063	15065	15066	15068	15070
15073	15080	15085	15086	15087
15100	15100.1	15100.2	15100.3	15100.4
15101	15112	15113	15114	15115
15116	15143	15145	15146	15147
15148	15160	15161	15161.5	15162
15163				

Register 75-05

itle 14, Sections: 15024 15054.1 15081

Register 75-18

Title 14, Sections: 15014 15070 15074

Register 75-22

Title 14, Sections: 15024 15054.1

Register 76-02

Title 14, Sections: 15190

Register 76-14

Title 14, Sections: 15190

Register 76-41

Title 14, Sections: 15011 15013 15023.5 15029 15029.6
15031 15032 15033 15037 15039
15040 15050 15051 15061 15063
15064 15065 15068.5 15069 15069.5
15070 15071 15073 15075 15081
15082 15083 15084 15085 15088
15101 15104 15112 15116 15117
15118 15119 15120 15140 15143
15143.5 15148 15149 15150 15160
15160.5 15161 15167

Appendices: B F G H I

Register 77-01

Title 14, Sections: 15088 15090 15143.1

Register 77-39

Title 5, Sections: 14000 14001 14010 14030 14031
14032 14040 14042 14046

Register 77-45

Title 5, Sections: 57100 57121 57140

Register 78-05

Title 14, Sections: 15011.6 15012 15023.7 15029.6 15030
15035.7 15039 15050 15051 15054.1
15054.2 15054.3 15055 15063 15064

15065.3 15065.5 15066 15067 15069.6
15070 15074 15075 15076 15077
15078 15079 15080

Register 80-19

Title 14, Sections: 15002 15006 15016 15023.5 15032.5
15037 15041 15042 15043 15050
15054.1 15054.2 15055 15063 15066
15067 15067.5 15068 15068.6 15069.7
15069.8 15074 15076 15079 15079.1
15079.2 15079.3 15079.4 15079.5 15080
15083 15085 15085.5 15088 15089
15100.2 15101 15102 15103 15104
15105 15111 15115 15125 15126
15127 15140 15140.5 15142 15143
15146 15149 15161.5 15161.6 15165.5

Appendices: A B D F G

Register 83-18

Title 5, Sections: 57121

Register 83-29

Title 14, Sections: 15000 15001 15002 15004 15005
15006 15007 15020 15021 15022
15023 15024 15025 15040 15041
15042 15043 15044 15045 15050
15051 15052 15053 15060 15061
15062 15063 15064 15065 15070
15071 15072 15073 15074 15075
15080 15081 15082 15083 15084
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15300 15300.1 15300.2 15300.3 15300.4
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15371 15372 15373 15374 15375
15376 15377 15378 15379 15380
15381 15382 15383 15384 15385
15386 15387

Appendices: K

Register 86-05

Title 14, Sections: 15006 15023 15024 15061 15062
15075 15082 15085 15087 15094
15096 15102 15110 15183 15312
15372

Appendices: C D E

Register 91-23

Title 5, Sections: 57121

Register 93-46

Title 5, Sections: 14011

Register 94-33

Title 14, Sections: 15063 15072 15087 15088.5 15126
15162 15164

Register 95-23

Title 5, Sections: 57121

Register 97-22

Title 14, Sections: 15062 15064 15065 15070 15072
15073 15074 15074.1 15075 15081.5
15083.5 15087 15090 15091 15093
15094 15106 15126 15127 15130
15175 15176 15177 15178 15179
15179.5 15187 15188 15189 15190
15206 15225 15229 15278 15279
15280 15281 15282

Register 98-35

Title 14, Sections: 15064

Register 98-44

Title 14, Sections: 15003 15004 15041 15045 15060
15061 15062 15063 15064 15064.5

15064.7	15065	15073.5	15075	15085
15086	15088.5	15091	15093	15097
15107	15111	15120	15124	15125
15126	15126.2	15126.4	15126.6	15130
15152	15162	15164	15183	15186
15201	15202	15204	15205	15206
15231	15269	15276	15283	15284
15285				

Register 2000-44

Title 5, Sections: 14011

Register 2001-05

Title 14, Sections:	15064	15082	15086	15105	15127
	15130	15176	15205	15206	

Register 2003-30

Title 14, Sections:	15053	15064	15092	15112	15130
	15152				

California Code of Regulations Originally Listed, Title 5

Sections 14011 and 57121

Calfornia Code of Regulations Originally Listed, Title 14

15002	15073	15122	15153
15004	15073.5	15123	15162
15020	15074	15124	15164
15021	15074.1	15125	15165
15022	15075	15126	15167
15025	15081.5	15126.2	15168
15041	15082	15126.4	15176
15042	15084	15126.6	15177
15043	15085	15128	15178
15050	15086	15129	15179
15053	15087	15130	15184
15060	15088	15132	15185
15061	15088.5	15140	15186
15062	15089	15142	15201
15063	15090	15143	15203
15064	15091	15145	15205
15064.5	15092	15147	15206
15064.7	15093	15148	15208
15065	15094	15149	15223
15070	15095	15150	15225
15071	15100	15152	15367
15072	15104		

Executive Orders

California State Clearinghouse
Handbook - 2000

Hearing Date: January 29, 2010
J:\MANDATES\2003\TC\03-tc-17\TC\DSA

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Section 17025 added by Statutes 1996, Chapter 1562

Government Code Sections 66031 and 66034 as amended by Statutes 1994, Chapter 300, and Statutes 1990, Chapter 1455

Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4, 21081, 21082, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5, 21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152, 21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by Statutes 1970, Chapter 1433; Statutes 1972, Chapter 1154; Statutes 1975, Chapter 222; Statutes 1976, Chapter 1312; Statutes 1977, Chapter 1200; Statutes 1983, Chapter 967; Statutes 1984, Chapter 571; Statutes 1985, Chapter 85; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 626; Statutes 1989, Chapter 659; Statutes 1991, Chapter 905; Statutes 1991, Chapter 1183; Statutes 1991, Chapter 1212; Statutes 93, Chapter 375; Statutes 1993, Chapter 1130; Statutes 1993, Chapter 1131; Statutes 1994, Chapter 1230; Statutes 1994, Chapter 1294; Statutes 1995, Chapter 801; Statutes 1996, Chapter 444; Statutes 1996, Chapter 547; Statutes 1997, Chapter 415; Statutes 2000, Chapter 738; Statutes 2001, Chapter 867; Statutes 2002, Chapter 1052; Statutes 2002, Chapter 1121

California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18;
Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44

California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15022, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30

California State Clearinghouse Handbook
Governor's Office of Planning and Research (January 2000)

California Environmental Quality Act

03-TC-17

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

This test claim addresses the activities required of school districts, county offices of education and community college districts pursuant to the California Environmental Quality Act (CEQA) and related statutes and regulations.[1] To assist the reader, there is a glossary of frequently used CEQA related terms and acronyms on page 54.

CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions that can be found in CEQA and the CEQA regulations. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR). If the EIR includes finding of significant environmental impacts, CEQA imposes a substantive requirement to adopt feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.[2] The EIR requirement, which effectively accomplishes the above purposes, is "the heart of CEQA."[3]

The project proponent is generally responsible for the costs of CEQA compliance, including the costs of preparing the EIR, if required. Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, a lead agency must make certain findings. If mitigation measures are required or incorporated into a project, the lead agency must adopt a reporting or monitoring program to ensure compliance with those measures. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the significant effects of the proposed project.

Staff concludes that the test claim statutes, regulations and alleged executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The California State Clearinghouse Handbook is not an executive order subject to Article XIII B, Section 6.
2. The Commission does not have jurisdiction over statutes adopted prior to January 1, 1975.
3. The statutes and regulations listed below, which generally require compliance with the CEQA process, do not mandate school districts or community college districts to perform any activities because:

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[1] Note that, as discussed in the staff analysis, staff finds that the California State Clearinghouse Handbook is not an executive order.

[2] Public Resources Code section 21002.

[3] *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795.

A. The plain language of Public Resources Code section 21083 imposes requirements on OPR and the Secretary of the Resources Agency, not school districts or community college districts.

B. Although school districts and community college districts are required to undertake maintenance projects, including emergency repair projects, CEQA contains specific exemptions for maintenance projects and emergency projects.

C. For all other school district and community college district projects, CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project.

Education Code Section 17025 added by Statutes 1996, Chapter 1562; Government Code Sections 66031 and 66034 as amended by Statutes 1994, Chapter 300, and Statutes 1990, Chapter 1455; Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4, 21081, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5, 21092.6, 21094, 21100, 21151, 21151.2, 21151.8, 21152, 21153, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by Statutes 1975, Chapter 222; Statutes 1976, Chapter 1312; Statutes 1977, Chapter 1200; Statutes 1983, Chapter 967; Statutes 1984, Chapter 571; Statutes 1985, Chapter 85; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 626; Statutes 1989, Chapter 659; Statutes 1991, Chapter 905; Statutes 1991, Chapter 1183; Statutes 1991, Chapter 1212; Statutes 93, Chapter 375; Statutes 1993, Chapter 1130; Statutes 1993, Chapter 1131; Statutes 1994, Chapter 1230; Statutes 1994, Chapter 1294; Statutes 1995, Chapter 801; Statutes 1996, Chapter 444; Statutes 1996, Chapter 547; Statutes 1997, Chapter 415; Statutes 2000, Chapter 738; Statutes 2001, Chapter 867; Statutes 2002, Chapter 1052; Statutes 2002, Chapter 1121; California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18; Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44 and California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30.

4. Public Resources Code section 21082, as amended by Statutes 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29 do not impose a new program or higher level of service on school districts and community college districts because:

A. The Public Resources Code section 21082 requirement for school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs by ordinance, resolution, rule or regulation, added in 1976, was a clarification of existing law regarding "evaluation of projects" and therefore does not impose a new program or higher level of service.

B. The requirement to adopt objectives, criteria, and procedures, for the evaluation of projects and the preparation of environmental documents pursuant to CEQA was required by the law as it existed immediately prior to the date that California Code of Regulations, title 14, section 15022 was adopted and has been continuously required by the Public Resources Code Section 21082 since January 1, 1973 and therefore does not impose a new program or higher level of service.

Staff Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

STAFF ANALYSIS

Claimant

Clovis Unified School District

Chronology

09/25/2003	Claimant, Clovis Unified School District, filed test claim with the Commission on State Mandates ("Commission")[4]
10/08/2003	Commission staff issued completeness review letter and requested comments from state agencies
10/28/2003	Department of Finance (DOF) requested an extension from the November 11, 2003 deadline to file comments in February, 2004
11/07/2003	The Commission granted DOF's request allowing an extension to February 7, 2004 to file comments on test claim
02/13/2004	DOF requested an additional 30-day extension to file comments
02/18/2004	The Commission granted DOF's request for an extension to March 19, 2004 to file comments on test claim
03/08/2004	DOF submitted comments on the test claim
03/31/2004	Claimant submitted a response to DOF's comments on the test claim
06/30/2008	Claimant submitted a supplement to the test claim filing (i.e. the history of Title 5 and 14 CCR sections pled in the test claim)

Background

This test claim addresses the activities required of school districts, county offices of education and community college districts pursuant to the California Environmental Quality Act (CEQA) and related statutes and regulations.[5]

CEQA OVERVIEW

CEQA was enacted in 1970 and is currently contained in Public Resources Code sections 21000-21177. There are also numerous statutory provisions relating to CEQA that are contained in other codes. Those pled in this test claim include Education Code section 17025 as added by Statutes 1996, chapter 1562 and Government Code sections 66031 and 66034 as amended by Statutes 1994, chapter 300, and Statutes 1990, chapter 1455. In addition to these code sections, interpretive regulations for implementing CEQA, officially known as "the CEQA Guidelines," were first adopted in 1973 and have been amended numerous times since then. The CEQA Guidelines are located in California Code of Regulations, title 14, sections 15000-15387. This

[4] Based on the filing date of September 25, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

[5] Note that, as discussed in the analysis below, staff finds that the California State Clearinghouse Handbook is not an executive order.

analysis will refer to the Public Resources Code sections 21000-21177 collectively as "CEQA" and the CEQA Guidelines (i.e. California Code of Regulations, title 14, sections 15000-15387) collectively as "the CEQA regulations."

The purposes of CEQA are:

- to inform decisionmakers and the public about project impacts;
- identify ways to avoid or significantly reduce environmental damage;
- prevent environmental damage by requiring feasible alternatives or mitigation measures;
- disclose to the public reasons why an agency approved a project if significant environmental effects are involved, involve public agencies in the process; and,
- increase public participation in the environmental review and the planning processes.[6]

CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions that can be found in CEQA and the CEQA regulations. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR). If the EIR includes finding of significant environmental impacts, CEQA imposes a substantive requirement to adopt feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.[7] The EIR requirement, which effectively accomplishes the above purposes, is "the heart of CEQA."[8]

The project proponent is generally responsible for the costs of CEQA compliance, including the costs of preparing the EIR, if required. Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, a lead agency must make certain findings. If mitigation measures are required or incorporated into a project, the lead agency must adopt a reporting or monitoring program to ensure compliance with those measures. If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the significant effects of the proposed project.

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[6] Public Resources Code section 21002, California Code of Regulations, title 14, section 15002.

[7] Public Resources Code section 21002.

[8] *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795.

PUBLIC AGENCY ROLES IN THE CEQA PROCESS

Lead Agencies

Existing law, pursuant to CEQA, requires public and private projects to be subject to the same level of environmental review.[9] In keeping with the recognition of the diverse conditions throughout the state and out of deference to local control over local land use decisions,[10] CEQA generally provides for a local agency to take responsibility for CEQA compliance for projects within its jurisdiction. Specifically, CEQA requires a local agency, such as a school district or a community college district,[11] to conduct an analysis of the environmental impacts associated with projects within its jurisdiction. A district acting in this capacity would be referred to as the "lead agency." A lead agency for a private project is the agency with the greatest responsibility for supervising or approving the project; usually the city or county.[12] However, in the case of public projects, such as a school project, the lead agency is the project proponent,[13] in this case, the school district or community college district. This is true even when the project is in another agency's jurisdiction.[14]

Responsible Agencies

A public agency, other than the lead agency, that has some discretionary power to approve or carry out a project (usually the authority to grant a needed permit) for which the lead agency is preparing an EIR or ND is known as a "responsible agency."[15] With few exceptions, responsible agencies are bound by the lead agency's determination of whether to prepare an EIR or ND and by the document prepared by the lead agency.[16] In certain instances, responsible agencies can

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[9] Public Resources Code section 21001.1; California Code of Regulations, title 14, 15002.

[10] Note that most of California's environmental laws (see e.g. the California Clean Air Act and the Planning and Zoning Law) specifically recognize local agency control over land use decisions and impose mainly procedural requirements on local agency decision making. See also *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875, 879 [""Land use regulation in California has historically been a function of local government under the grant of police power contained in California Constitution, article XI, section 7." (We have recognized that a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state. [Citations]".]

[11] The CEQA regulations define "local agency" to mean "any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, *districts*, *school districts*, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency." (Tit. 14, Cal. Code of Regs., § 15368, emphasis added.)

[12] California Code of Regulations, title 14, section 15051(b).

[13] California Code of Regulations, title 14, section 15051(a).

[14] Id.

[15] California Code of Regulations, title 14, section 15381.

[16] See Public Resources Code section 21080.1(a); California Code of Regulations, title 14, section 15050(c).

challenge lead agency determinations, assume the lead agency role, or participate in other ways in the CEQA process. Generally, responsible agencies have two sets of responsibilities:

(1) responding to the lead agency's request for information or comments as the lead agency determines whether to prepare an EIR or ND and commenting on any CEQA documents that are prepared; and,

(2) responsibilities related to approving or acting on the project.[17]

Specifically, in its role as consultant to the lead agency, the responsible agency:

(1) Makes a recommendation on whether to prepare an EIR or ND.[18]

(2) Sends a written reply within 30 days after receiving a notice of preparation (NOP) of an EIR specifying the scope and content of information, germane to the responsible agency's statutory responsibilities, which should be included in the EIR.[19]

(3) Designates a representative to attend meetings requested by the lead agency regarding scope and content of the EIR.[20]

(4) Provides comments, limited to the project activities within the responsible agency's area of expertise, on the draft EIR (DEIR) or ND focusing on any shortcomings in the document or any additional alternatives or mitigation measures that should be considered.[21] The comments must be specific as possible and supported by specific oral or written documentation.[22]

(5) Provides the lead agency with performance standards for mitigation measures proposed by the responsible agency. The responsible agency may also request project changes or specific mitigation measures but then must also prepare the mitigation monitoring or reporting program for those changes if requested to do so by the lead agency.[23]

With regard to its responsibilities related to approving or acting on its own project, the responsible agency must:

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[17] See generally Public Resources Code section 21080.3; California Code of Regulations, title 14, section 15096.

[18] California Code of Regulations, title 14, section 15096, subdivision (b)(1).

[19] Public Resources Code section 21080.4, subdivision (a); California Code of Regulations, title 14, section 15096, subdivision (b)(1).

[20] California Code of Regulations, title 14, section 15096, subdivision (c).

[21] Public Resources Code section 21153(c); California Code of Regulations, title 14, sections 15086, subdivision (c) and 15096, subdivision (d).

[22] Id.

[23] Public Resources Code section 21081.6, subdivision (c); California Code of Regulations, title 14, 15086, subdivision (d).

(1) Consider environmental effects of the project as shown in the EIR or ND and feasible mitigation measures within the responsible agency's powers.[24]

(2) Decide whether the EIR or ND is adequate for its use and, if not:

a. take the issue to court within 30-days after the lead agency has filed the notice of determination (NOD);

b. prepare a subsequent EIR if permissible under California Code of Regulations, title 14, section 15162; or,

c. assume the lead agency role if permissible under California Code of Regulations, title 14, section 15052, subdivision (a)(3).[25]

(3) Make findings, adopt a reporting or monitoring program (if required) and file a NOD with the Office of Planning and Research (OPR) if a state agency, or the county clerk if a local agency.[26]

Trustee Agencies

A "trustee agency" is a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the State of California. Trustee agencies include:

a. The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department.

b. The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

c. The State Department of Parks and Recreation with regard to units of the State Park System.

All of the lead agency consultation requirements that apply with regard to responsible agencies also apply to trustee agencies and trustee agencies may only make substantive comments regarding project activities within their area of expertise.[27] For any project where a ND is proposed and a state agency is a trustee agency, the draft ND must be sent to OPR for state agency review.[28]

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[24] California Code of Regulations, title 14, 15096; see also California Code of Regulations, title 14, section 15050, subdivision (b) regarding certification.

[25] California Code of Regulations, title 14, section 15096, subdivision (e).

[26] Public Resources Code sections 21108, 21152 and 21081.6; California Code of Regulations, title 14, sections 15096 and 15097.

[27] Public Resources Code sections 21080.3, 21080.4, 21104, and 21153; California Code of Regulations, title 14, sections 15082, 15086, 15104.

[28] Public Resources Code section 21091; California Code of Regulations, title 14, sections 15073, subdivision (c) and 15205, subdivision (b).

Other Agencies That Must be Consulted

a. The University of California with regard to sites within the Natural Land and Water Reserves System.[29]

b. Transportation planning agencies, for projects of statewide, regional or areawide significance.[30]

c. Planning commissions, for school site acquisition projects.[31]

d. Air quality agencies, for school construction projects.[32]

The Office of Planning and Research

The CEQA regulations are unique in that they are prepared by OPR and then adopted by the Resources Agency pursuant to Public Resources Code section 21083. Therefore, the regulations are actually regulations of the Resources Agency. However, OPR is responsible for carrying out various state level environmental review activities pursuant to CEQA, including:

(1) Preparing and developing proposed CEQA Guidelines and reviewing the adopted CEQA Guidelines, at least once every two years, and recommending proposed changes or amendments to the Secretary of Resources.[33]

(2) Receiving, evaluating and making recommendations to the Secretary of the Resources Agency for changes to the list of categorically exempt projects.[34]

(3) Upon request from a lead agency, assisting the lead agency in determining which agencies are responsible agencies.[35]

(4) Upon request from a lead agency, assisting the lead agency in determining which public agencies have responsibility for carrying out or approving a proposed project and notifying responsible agencies regarding meetings requested by the lead agency.[36]

(5) Resolving disputes over which agency is the lead agency.[37]

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[29] California Code of Regulations, title 14, section 15386.

[30] Public Resources Code section 21092.4.

[31] Public Resources Code section 21151.2.

[32] Public Resources Code section 21151.8.

[33] Public Resources Code sections 21083 and 21087.

[34] Public Resources Code section 21086.

[35] Public Resources Code section 21080.3.

[36] Public Resources Code section 21080.4.

[37] Public Resources Code section 21165.

(6) Receiving for filing the following notices and CEQA documents:

a. A state agency notice of exemption (NOE).[38]

b. DEIRs, NDs and other environmental documents to be reviewed by state agencies.[39]

c. Notices of Completion (NOCs) for state or local agency DEIRs and final EIRs (FEIRs).[40]

d. NODs if:

i. a state agency is the lead agency and the project was approved using an ND or an EIR;[41] or,

ii. a local agency is the lead agency but the project requires a discretionary approval from a state agency.[42]

(7) Coordinating state-level review of CEQA documents including:

a. Receiving for filing the following notices and CEQA documents:

i. A state agency NOE.[43]

ii. NOPs for projects where a state agency is a responsible or trustee agency.[44]

iii. DEIRs, NDs and other environmental documents to be reviewed by state agencies or for projects of statewide, regional or areawide significance.[45]

iv. NOCs for state or local agency DEIRs and FEIRs.[46]

v. NODs if:

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[38] Public Resources Code section 21080.4 subdivision (d); California Code of Regulations, title 14, section 15023 subdivision (e).

[39] California Code of Regulations, title 14, section 15025 subdivision (b).

[40] Public Resources Code section 21108 subdivision (b): California Code of Regulations, title 14, section 15062 subdivisions (b) and (c).

[41] Public Resources Code section 21108, subdivision (a); California Code of Regulations, title 14, section 15075 and 15094.

[42] California Code of Regulations, title 14, sections 15075 and 15094.

[43] Public Resources Code section 21080.4 subdivision (d); California Code of Regulations, title 14, section 15023 subdivision (e).

[44] California Code of Regulations, title 14, section 15082 subdivision (d).

[45] California Code of Regulations, title 14, sections 15205, subdivision (b) and 15206, subdivision (a).

[46] Public Resources Code section 21108, subdivision (b); California Code of Regulations, title 14, section 15062, subdivisions (b) and (c).

- A state agency is the lead agency and the project was approved using an ND or an EIR;[47] or,
- A local agency is the lead agency but the project requires a discretionary approval from a state agency.[48]

b. Receiving certain CEQA documents and notices from state and local agencies and distributing them to appropriate state agencies (i.e. responsible and trustee agencies) for review and comment.[49]

c. Ensuring that responsible and trustee agencies provide necessary information in response to NOPs.[50]

(8) Establishing, maintaining, and making available through the Internet, a central repository for NOEs, NOPs, NOCs, and NODs.[51]

(9) Providing the California State Library with copies of any CEQA documents submitted in electronic format to OPR. The California State Library serves as the repository for such electronic documents and must make them available for viewing to the general public, upon request.[52]

The Resources Agency

The Secretary of the Resources Agency is responsible for fulfilling the following duties:

(1) Adopting and amending the CEQA Guidelines.[53]

(2) Adopting categorical exemptions from CEQA.[54]

(3) Certifying state environmental programs that qualify as certified regulatory programs and receiving and filing notices filed by certified regulatory programs.[55]

ADOPTION OF AGENCY PROCEDURES TO IMPLEMENT CEQA

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[47] Public Resources Code section 21108, subdivision (a); California Code of Regulations, title 14, section 15075, and 15094.

[48] California Code of Regulations, title 14, sections 15075 and 15094.

[49] Public Resources Code section 21091; California Code of Regulations, title 14, section 15023, subdivision (c).

[50] Public Resources Code sections 21080.4 subdivision (d); California Code of Regulations, title 14, section 15023.

[51] Public Resources Code section 21159.9, subdivision (c); California Code of Regulations, title 14, section 15023, subdivision (h). These notices may be found at www.ceqanet.ca.gov.

[52] Public Resources Code section 21159.9, subdivision (d).

[53] Public Resources Code section 21083; California Code of Regulations, title 14, section 15024.

[54] Public Resources Code section 21084; California Code of Regulations, title 14, section 15024.

[55] Public Resources Code section 21080.5; California Code of Regulations, title 14, section 15024.

Both CEQA and the CEQA regulations require public agencies to adopt their own objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for implementing CEQA by ordinance, resolution, rule or regulation.[56] In adopting its procedures, the public agency has a choice of the following approaches:

(1) Adopting the CEQA regulations by reference.

(2) Adopting the CEQA regulations by reference and adopting some of its own provisions, specifically tailored to the agency's criteria that are consistent with CEQA and the CEQA regulations.

(3) Adopting a detailed set of its own objectives, criteria and procedures that are consistent with CEQA and the CEQA regulations.[57]

If the agency adopts its own procedures without incorporating the CEQA regulations by reference, the agency's objectives, criteria and procedures must incorporate all of the necessary requirements.[58] A school district, community college district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own.[59]

THE CEQA PROCESS[60]

Types of Projects Subject to CEQA

Under CEQA, "project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, *and* which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.[61]

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[56] Public Resources Code section 21082, California Code of Regulations, title 14, section 15022, subdivision (a).

[57] California Code of Regulations, title 14, section 15022, subdivision (d).

[58] Id.

[59] Public Resources Code section 21082.

[60] Note that this background on the CEQA process is based upon the current requirements of CEQA and the CEQA regulations/CEQA Guidelines and is meant only to provide the reader with an overview of the CEQA process. It in no way distinguishes the test claim statutes and regulations from the requirements of pre-1975 law or from any changes that have been made to those statutes and regulations since the filing of the test claim.

[61] Public Resources Code section 21065.

A CEQA analysis is required only for discretionary projects, that is, projects that may or may not be approved at the district's discretion. Ministerial projects, meaning projects that must be approved if all applicable legal criteria are met, do not require CEQA analysis.[62] Under CEQA, a project is "ministerial" if it "involv[es] little or no personal judgment by the public official as to the wisdom or manner of carrying out the project."[63]

Additionally, a project is not subject to CEQA if it can be seen with certainty that there is no possibility of a significant effect on the environment.[64] ""Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.[65]

Preliminary Review

The lead agency must complete a preliminary review of a proposed activity to determine:

(1) Whether the application (for a private project) is complete.

(2) Whether the activity is subject to CEQA.

(3) Whether the activity is exempt from CEQA, and if so, whether to prepare and file an optional notice of exemption (NOE).[66] The filing of an NOE has no significance except that it triggers a 35-day statute of limitations.[67] Note that K-12 school districts are required, as a condition of receipt of state funding, to self-certify that they have filed the appropriate CEQA document.

Initial Study

If the lead agency determines that no exemptions apply to a project subject to CEQA and decides not to proceed directly to the preparation of an EIR, it must conduct an initial study which considers all phases of project planning, implementation, and operation to determine whether the project may have a significant effect on the environment.[68] Before making this determination,

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[62] See Public Resources Code section 21080, subdivisions (a) and (b)(1): California Code of Regulations, title 14, sections 15357 and 15369.)

[63] California Code of Regulations, title 14, section 15369.

[64] California Code of Regulations, title 14, section 15060.

[65] Public Resources Code section 21068; California Code of Regulations, title 14, section 15382.

[66] Public Resources Code Sections 21108 and 21152; California Code of Regulations, title 14, sections 15060, 15061 and 15062. See also *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1385 (A school district need not: prepare a detailed written evaluation to determine whether project is exempt, provide any notice or opportunity to review or comment on the exemption to any other agency or to the public, and, it need not hold a hearing on its exemption determination.)

[67] Id.

[68] California Code of Regulations, title 14, section 15063.

the lead agency must consult with responsible agencies and trustee agencies.[69] The purposes of an initial study are to provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration; enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a mitigated negative declaration (MND); assist in the preparation of an EIR, if one is required, by focusing the EIR on the effects determined to be significant, identifying the effects determined not to be significant, explaining the reasons for determining that potentially significant effects would not be significant, and identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects; facilitate environmental assessment early in the design of a project; provide documentation of the factual basis for the finding in a negative declaration (ND) that a project will not have a significant effect on the environment; eliminate unnecessary EIRs; and, determine whether a previously prepared EIR could be used with the project.[70]

Negative Declaration

If the lead agency proposes to adopt an ND or an MND, it must:

(1) Prepare and distribute a notice of intent (NOI) to adopt an ND or MND.[71]

(2) Prepare the proposed ND and distribute it, together with the initial study for public and agency review.[72]

(3) Consider the proposed ND and comments and approve or disapprove the ND.[73]

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[69] Public Resources Code section 21080.3, subdivision (a). Note also that under CEQA and related statutes, school districts have additional special consultation requirements which include: Public Resources Code section 21151.2 (requirement to give the planning commission with jurisdiction over the site written notice of the district's intent to acquire title to property for a new or expanded school site); Public Resources Code section 21151.8 and Education Code section 17213 (requirement to include in any ND or EIR an analysis of hazardous substances on the site and requirement to consult with administering agency for hazardous material [generally the county health department]); Public Resources Code section 21151.8, subdivision (a)(2) and California Code of Regulations, title 14, section 15186, subdivision (c) (requirement to consult with local air pollution control district to ascertain whether any facilities within a quarter mile of the proposed site might emit hazardous materials, substances or waste; Education Code section 17213.1 (as a condition of receiving state funds, the requirement to consult with an environmental assessor to conduct a Phase I environmental assessment (and potentially a Phase II to determine whether hazardous materials are present, the extent of their release or threat of release) before acquiring an school site or before beginning construction of a project.

[70] California Code of Regulations, title 14, section 15063.

[71] Public Resources Code section 21092(a); California Code of Regulations, title 14, section 15072, subdivision (a).

[72] California Code of Regulations, title 14, section 15073.

[73] California Code of Regulations, title 14, section 15074.

(4) File and post a NOD, if the ND is adopted.[74] The filing and posting of the NOD triggers a 30-day statute of limitations, if it is not properly filed and posted, the statute of limitations is 180-days.

A lead agency may hold public hearings regarding the proposed ND at its option, but such hearings must be properly noticed.[75]

Prepare Draft Environmental Impact Report (DEIR)

A lead agency that determines that an EIR is required must complete the following steps:

(1) Draft and distribute a NOP stating that an EIR will be prepared.[76]

(2) Receive information and comments on the NOP and consider incorporating them into the DEIR.[77]

(3) Consult with other agencies and hold scoping meetings (scoping meetings can be voluntary or mandatory depending on the situation) with responsible and trustee agencies, other interested state and local agencies, and, with members of the public.[78]

(4) Consult with and request comments on the DEIR from:

a. Responsible agencies.

b. Trustee agencies with resources affected by the project.

c. Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project.

d. Any city or county which borders on a city or county within which the project is located.

e. For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.[79]

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[74] See generally Public Resources Code section 21080, subdivision (c); California Code of Regulations, title 14, section 15075.

[75] Public Resources Code section 21092.5, subdivision (b).

[76] Public Resources Code section 21080.4, subdivision (a); California Code of Regulations, title 14, section 15082, subdivision (a).

[77] California Code of Regulations, title 14, section 15084, subdivision (c).

[78] Public Resources Code section 21080.4, subdivision (b)

[79] Public Resources Code section 21081.7; California Code of Regulations, title 14, section 15086.

(5) Prepare or hire a consultant to prepare the DEIR.[80]

(6) Prepare a NOC when the DEIR is complete, file it with OPR, provide public notice in a newspaper of general circulation that the DEIR is available for review and comment, and, distribute the DEIR.[81]

Prepare Final Environmental Impact Report (FEIR)

(1) Receive and review comments on the DEIR, prepare written responses to each public agency that commented and to all comments on significant environmental issues for inclusion in the FEIR.[82]

(2) Determine whether any new "significant" information (including any new findings of significant impact) have been added to the FEIR after the DEIR was circulated and, if so, re-circulate the EIR for public review and comment.[83]

(3) Certify that the FEIR:

a. Has been completed in compliance with CEQA.

b. Was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project.

c. Reflects the lead agency's independent judgment and analysis.[84]

Project Approval Decision-making Process

(B) Once the FEIR has been certified the lead agency must consider the FEIR and decide whether or how to approve or carry out the project.[85]

(C) CEQA prohibits the approval of a project for which the EIR has identified one or more significant effects[86] on the environment unless it makes one of the following findings supported by substantial evidence in the record:

a. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as

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[80] Public Resources Code sections 21082.1, subdivision (a) and 21151, subdivision (a); California Code of Regulations, title 14, sections 15085 and 15087.

[81] Public Resources Code section 21161; California Code of Regulations, title 14, section 15084, subdivision (a).

[82] Public Resources Code section 21092.5; California Code of Regulations, title 14, section 15088.

[83] Public Resources Code section 21092.1.

[84] California Code of Regulations, title 14, section 15090.

[85] California Code of Regulations, title 14, section 15092, subdivision (a).

[86] Note that CEQA and the CEQA regulations use the words "effects" and "impacts" interchangeably.

identified in the final EIR. (Note: If this finding is made, a mitigation monitoring reporting program must also be adopted.)

b. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

c. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.[87]

(D) If there are unavoidable significant impacts, and the lead agency wants to approve the project anyway, it must adopt a statement of overriding considerations supported by substantial evidence in the record.[88]

Post Project Approval Requirements

(1) After approving the project the lead agency must:

a. File a copy of the FEIR with the appropriate planning agency of any cities or counties where significant effects on the environment may occur.

b. Retain one or more copies of the FEIR as public records for a reasonable period of time.

c. Require the applicant to provide a copy of the certified, FEIR to each responsible agency.[89]

(2) If mitigation measures were adopted for the project, the lead agency is responsible for implementing the mitigation monitoring or reporting program.[90]

(3) If there are substantial changes in the project or certain types of new information become available, a supplemental or subsequent EIR may be required.[91]

Special Rules Related to CEQA Litigation

(1) Any action brought in the superior court relating to any act or decision of a public agency made pursuant to CEQA may be subject to a mediation proceeding.[92]

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[87] Public Resources Code section 21002; California Code of Regulations, title 14, section 15091.

[88] California Code of Regulations, title 14, section 15093.

[89] California Code of Regulations, title 14, section 15095.

[90] Public Resources Code section 21081.6, subdivision (a); California Code of Regulations, title 14, section 15097.

[91] Public Resources Code section 21166; California Code of Regulations, title 14, sections 15162-15164.

[92] Government Code section 66031.

(2) If the mediation does not resolve the action, the court may, in its discretion, schedule a settlement conference before a judge of the superior court. If the action is later heard on its merits, the judge hearing the action shall not be the same judge who conducted the settlement conference, except in counties with only one judge of the superior court.[93]

Costs of CEQA Compliance

In general, the project proponent (also known as the applicant) bears 100 percent of the lead agency's costs for CEQA compliance, which often includes the cost of hiring a consultant to prepare the CEQA document. A lead agency is authorized to "charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred by the lead agency" for preparing a ND or an EIR for the project and for procedures necessary to comply with CEQA on the project.[94] Additionally, the lead agency may require an applicant to provide data and information for CEQA compliance purposes.[95] These costs are generally considered a part of the cost of the project. For public projects, the cost is born by the public project proponent unless the project proponent has fee authority or qualifies for one of the many state or federal construction grants which authorize CEQA expenses as part of the cost of the project.

Claimant's Position

Claimant alleges reimbursable state-mandated costs to school districts and community college districts for "developing, adopting and implementing policies and procedures, and periodically revising those policies and procedures, to comply with the requirements of [CEQA], and related statutes and regulations."[96] Claimant additionally asserts that the test claim statutes and regulations impose a list, approximately 100 pages long, of reimbursable state-mandated activities relating to CEQA compliance. The specific activities claimed can be found in the test claim filing and the declarations of William C. McGuire, Clovis Unified School District and Thomas J. Donner, Santa Monica Community College District.[97]

In claimant's response to DOF's comments, claimant asserts that "DOF is mistaken" in its interpretation that CEQA is entirely a law of general application. Specifically, claimant cites to Education Code section 17025, subdivision (b) which provides that the applicant district is the lead agency for purposes of CEQA with regard to projects funded under the State School Building Lease-Purchase Law of 1976.[98] Thus, the claimant asserts, a school district, "when

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[93] Government Code section 66034.

[94] Public Resources Code section 21089, subdivision (a); California Code of Regulations, title 14, section 15045.

[95] Public Resources Code section 21082.1, subdivision (b); California Code of Regulations, title 14, section 15084, subdivision (b).

[96] Declarations of William C. McGuire, Clovis Unified School District and Thomas J. Donner, Santa Monica Community College District, p. 2.

[97] See Test Claim filing, pp. 4-185 and Declarations of William C. McGuire, Clovis Unified School District and Thomas J. Donner, Santa Monica Community College District, pp. 2-101.

[98] Claimant, Response to DOF Comments, March 31, 2004, p.2. Note also that claimant asserts on page 1 that "[t]he comments of DOF are incompetent and should be excluded." However,

constructing any new school or reconstructing or altering any existing building, is not only required to comply with CEQA, it is also required to fulfill the governmental duties of a lead agency. Other persons and entities are not required to do so."[99]

Claimant also disputes DOF's argument that school districts are not compelled to construct additional school facilities or acquire any site for the purposes of constructing a school building. Claimant cites to the following:

1. *Butt v. State of California*, which discusses the duty of the Legislature to "provide for a system of common schools, by which a school be kept up and supported in each district."[100]

2. A report of the California Research Bureau which states in part that one challenge public schools face ". . . .is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand." [101] That report also discusses the shortfall of available funds to meet the need for public school construction and rehabilitation.

3. The March 2004 Proposition 55 ballot information pamphlet which discusses the "need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils.[102]

Claimant states that "a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate"[103] and discusses the case law regarding practical compulsion. Claimant concludes that "[i]n light of the finding that there is a need to construct new schools to house 1.1 million pupils and the need to modernize schools for an additional 1.1 million pupils, it is beyond the realm of practical reason to opportunistically argue that there is no state law or regulation which requires a school district to construct additional school facilities or acquire any site for the purpose of constructing a school building."[104]

Claimant also disputes DOF's argument that the costs incurred under CEQA are allowable costs for the use of new construction grants provided by the State Allocation Board under the School Facilities Program (SFP). Specifically, Claimant argues:

DOF's comments on the test claim do not make any factual assertion and, in any event, are supported by the declaration of Walt Schaff. (See DOF, Comments on the Test Claim, dated March 8, 2004, p. 4.

[99] Claimant, Response to DOF Comments, supra, p.2

[100] Claimant, Response to DOF Comments, supra, p.2, citing *Butt v. State of California* (1992) 4 Cal. 4th 668, p. 680.

[101] Id, p.3, citing *School Facility Financing – A History of the Role of the State allocation Board and Options for the Distribution of Proposition 1A Funds* (Cohen, Joel, February 1999).

[102] Id.

[103] Id, p. 4.

[104] Id, p. 7.

> The district's necessary costs of CEQA are not funded out of the [State's share of] 50 percent given to school districts to construct or modernize schools. CEQA is a separate statutory program. In fact, Education Code section 17025, subdivision (a) provides that the State Allocation Board shall not authorize a contract for the construction of any new school, or for the addition to, or reconstruction or alteration of, any existing building, for lease-purchase to any school district unless the applicant district has submitted plans therefor [sic] to the Department of General Services and obtained the written approval of the department pursuant to Article 3 (commencing with Section 17280) of Chapter 3 of part 10.5.
>
> DOF's argument in this regard is bereft of logic or legal foundation.[105]

Finally, claimant disagrees with DOF's position that Education Code Part 1, Chapter 6, Title 1, Division, 1 provides schools with authority to impose development fees and that therefore Government Code section 17556, subdivision (d) prohibits reimbursement for any state-mandated activities. Claimant argues: "Government Code section 17556(d) refers to 'service charges, fees or assessments.' Education Code 17620 refers to a 'fee, charge, dedication or other requirement.' They are not the same."[106] Claimant includes a discussion of the limitations on the purposes for which a "fee, charge or dedication" may be used (i.e. to fund the construction or reconstruction of school facilities but not for maintenance) pursuant to Government Code section 17620, subdivision (a) (1).

Department of Finance's Position

DOF, in its comments on the test claim, states that "[CEQA] requirements are not unique to local government.[107] In support of this argument DOF cites to Public Resources Code section 21001.1 and California Code of Regulations, title 14, section 15002. Public Resources Code section 21001.1 provides:

> The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

Moreover, DOF argues, CEQA applies to discretionary, school district proposed, projects and school facilities construction projects.[108] In support of this assertion DOF writes:

> Nothing in State law or regulation requires a school district to construct additional school facilities or to acquire any site for the purpose of constructing a school building. Instead, the law provides school districts with flexibility, discretion, and choice over the manner in which districts elect to house their student populations. For example, school districts have the discretion to operate year round multi-track schools or two kindergarten sessions per day, use portable classrooms or transport

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[105] Claimant, Response to DOF Comments, supra, pp. 7-8.

[106] Claimant, Response to DOF Comments, supra, p. 9.

[107] DOF, Comments on the Test Claim, March 8, 2004, p.1.

[108] DOF, Comments on the Test Claim, supra, p. 2.

students to underused schools. It is the district's voluntary decision to construct a school facility rather than using the aforementioned alternative that forced the district to carry out the activities required under CEQA.[109]

DOF also cites to the *Kern*[110] case for the proposition that "where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for [the] increased level of activity."[111]

Next, DOF argues that the costs incurred under CEQA are allowable costs for the use of new construction grants provided by the State Allocation Board.[112] Specifically, DOF states "[t]he State Allocation Board provides new construction grants through the State School Facilities Program (SFP) to cover the State's share of all necessary project costs, which include costs incurred under CEQA. According to DOF, the State's share "is typically 50 percent, but may be up to 100 percent if a district receives hardship funding. Therefore, any necessary costs of CEQA are, in fact, funded through voluntary participation in the SFP."[113]

Finally, DOF argues that "school districts have the authority to charge development fees to finance construction projects."[114] Specifically, DOF asserts that Education Code sections 17620-17626 "authorize school districts to levy fees against any construction within its district boundaries for the purpose of funding school construction."[115] DOF concludes with a discussion of the prohibition against finding a reimbursable mandate in a statute or executive order ". . . .if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order."[116]

Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[117] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or

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[109] Id.

[110] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal. 4th 727.

[111] DOF, Comments on the Test Claim, supra, p. 2.

[112] Id.

[113] Id.

[114] DOF, Comments on the Test Claim, supra, p. 2.

[115] Id.

[116] Id.

[117] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

task.[118] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[119]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[120] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[121] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[122] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[123]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[124] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[125]

This analysis addresses the following issues:

1. Is the California State Clearinghouse Handbook an executive order subject to Article XIII B, section 6 of the California Constitution?
2. Does the Commission have jurisdiction over statutes adopted prior to January 1, 1975?
3. Do the test claim statutes and executive orders impose state-mandated duties on school districts and community college districts within the meaning of Article XIII B, section 6 of the California Constitution?

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[118] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[119] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 *(Lucia Mar)*.

[120] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,*

[121] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[122] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[123] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[124] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[125] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

4. Do the activities mandated by the test claim statutes and executive orders impose a new program or higher level of service on school districts and community college districts?

Issue 1: The California State Clearinghouse Handbook is Not an Executive Order Subject to Article XIIIB, Section 6

At the outset, staff finds that the California State Clearinghouse Handbook (Handbook) is not an executive order. An executive order is "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor.[126] Although the Handbook is issued by the Governor's Office of Planning and Research (OPR) and the director of OPR serves at the pleasure of the Governor, the Handbook does not impose an "order, plan, requirement, rule or regulation." Because the Handbook does not require districts to do anything and is not a plan, it is not an executive order. The Handbook merely explains the functions of the State Clearinghouse under CEQA and provides an overview of the environmental review process, summarizing requirements that have been established pursuant to statutory and regulatory provisions, including the test claim statutes and test claim regulations. The Handbook does not add any additional requirements above what is required by the relevant statutes and regulations but rather provides a tool to make compliance easier. Specifically, the Handbook is designed to make CEQA compliance easier for local agencies and school districts by laying things out in a simple step-by-step process. However, local agencies and school districts are free to refer solely to CEQA, the CEQA regulations and related statutes and regulations and to consult with their attorneys to determine how to navigate the CEQA process if that is their preference. Nonetheless, given the fact that courts have cited to the Handbook as a guide to how the CEQA process works in practice,[127] it has value as a guide to the process.

Issue 2: The Commission Does Not Have Jurisdiction and Reimbursement is Not Required for Statutes Enacted Prior to January 1, 1975

Before beginning a mandates analysis on the test-claim statutes and regulations, a determination of which statutes the Commission has jurisdiction over must be made. California Constitution Article XIII B, section 6, subdivision (a) requires the state to reimburse local governments for any state-mandated new program or higher level of service imposed on any local government with few exceptions. One of the exceptions to the reimbursement requirement provided in article XIII B, section 6 of the California Constitution is for "[l]egislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to 1975."[128]

Staff finds that the Commission does not have jurisdiction over Public Resources Code sections 21082, 21083, 21100, 21102, 21150, 21151, 21152, 21153, 21154, 21165, 21166, or 21167 as added or amended by Statutes 1970, chapter 1433; and, Statutes 1972, chapter 1154 since these statutes were enacted prior to January 1, 1975. Staff also finds that Public Resources Code sections 21102, 21150 and 21154 have not been amended since 1972. Therefore, no

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[126] Government Code section 17516.

[127] *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151. (Cited to show how the CEQA process works in practice.)

[128] California Constitution Article XIII B, Section 6 subdivision (a)(3); see also Government Code Section 17514.

constitutional or statutory provision mandates reimbursement to local governments for costs incurred in complying with these statutes.

Issue 3: Do the Remaining Test Claim Statutes and Regulations Impose State-Mandated Duties on School Districts and Community College Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution?

For the test claim statutes or regulations to impose a state-mandated program, the language must order or command a school district or community college district to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where program requirements are only invoked after the district has made an underlying discretionary decision causing the requirements to apply, or where participation in the underlying program is voluntary, courts have held that resulting new requirements do not constitute a reimbursable state mandate.[129] Stated another way, a reimbursable state mandate is created when the test claim statutes or regulations establish conditions under which the state, rather than a local entity, has made the decision requiring the district to incur the costs of the new program.[130]

Staff finds that the statutes and regulations listed below, which generally require compliance with the CEQA process discussed at length in the background above on pages 5-19 do not mandate school districts or community college districts to perform any activities because:

A. The plain language of Public Resources Code section 21083 imposes requirements on OPR and the Secretary of the Resources Agency, not school districts or community college districts.

B. Although school districts and community college districts are required to undertake maintenance projects, including emergency repair projects, CEQA contains specific exemptions for maintenance projects and emergency projects.

C. For all other school district and community college district projects, CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project.

Education Code Section 17025 added by Statutes 1996, Chapter 1562; Government Code Sections 66031 and 66034 as amended by Statutes 1994, Chapter 300, and Statutes 1990, Chapter 1455; Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4, 21081, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5, 21092.6, 21094, 21100, 21151, 21151.2, 21151.8, 21152, 21153, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by Statutes 1975, Chapter 222; Statutes 1976, Chapter 1312; Statutes 1977, Chapter 1200; Statutes 1983, Chapter 967; Statutes 1984, Chapter 571; Statutes 1985, Chapter 85; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 626; Statutes 1989, Chapter 659; Statutes 1991, Chapter 905; Statutes 1991, Chapter 1183; Statutes 1991, Chapter 1212; Statutes 93, Chapter 375; Statutes 1993, Chapter 1130; Statutes

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[129] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Kern High School Dist., supra,* 30 Cal.4th 727, 727.

[130] *San Diego Unified School Dist., supra* (2004) 33 Cal.4th 859, 880.

1993, Chapter 1131; Statutes 1994, Chapter 1230; Statutes 1994, Chapter 1294; Statutes 1995, Chapter 801; Statutes 1996, Chapter 444; Statutes 1996, Chapter 547; Statutes 1997, Chapter 415; Statutes 2000, Chapter 738; Statutes 2001, Chapter 867; Statutes 2002, Chapter 1052; Statutes 2002, Chapter 1121; California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18; Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44 and California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30.

However, staff finds that Public Resources Code section 21082, as amended by Statutes of 1976, chapter 1312 and California Code of Regulations, title 14 section 15022 as amended by Register 83, No. 29 mandate school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs, by ordinance, resolution, rule or regulation, no later than 60 days after the Secretary of the Resources Agency adopts the CEQA regulations or amendments thereto. This requirement to adopt objectives, criteria, and procedures for NDs is not triggered by an underlying voluntary decision of a school district or community college district.

A. The plain language of Public Resources Code section 21083 imposes requirements on OPR and the Secretary of the Resources Agency, but does not impose mandated duties on school districts or community college districts.

Public Resources Code section 21083 provides:

(a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if one or more of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(f) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines may not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

Based on the plain language of this statute, Public Resources Code section 21083 requires OPR and the Secretary of Resources to perform activities but it does not mandate school districts or community college districts to perform any activities.

B. Although school districts and community college districts are required to undertake maintenance projects, including emergency repair projects, CEQA contains specific exemptions for maintenance projects and emergency projects.

Maintenance projects, including emergency repair projects, are the only projects over which districts do not have discretion. However, maintenance projects and emergency projects are among the many exemptions from CEQA that have been provided for school projects. School districts enjoy many exemptions from CEQA not only for maintenance and emergencies, but also for major reconstruction projects and additions to schools that include up to ten new class rooms.[131] Although school districts and community college districts are required to keep schools and colleges in good repair, staff finds that school and community college projects to maintain facilities in good repair, including emergency repair projects, are statutorily or categorically exempt from CEQA.

1. *School Districts and Community College Districts are Required to Keep Schools in Good Repair Which Includes Making Emergency Repairs*

Education Code section 17593 requires school districts to keep schools in repair:

> The clerk of each district except a district governed by a city or city and county board of education shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and property during the vacations of the school.

Moreover, Education Code section 17565 requires the governing board of any school district to "furnish, repair, insure against fire, and in its discretion rent the school property of its districts."

Prior to 2006, "good repair" was not defined in statute. Education Code section 17002 was amended by Statutes 2006, chapter 704 to define "good repair" to mean:

> [T]he facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to an interim evaluation instrument developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria. . . .In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection and evaluation instrument and local evaluation instruments shall include at least the following criteria:

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[131] There are also several exceptions available for discretionary school projects including: Statutory exceptions: Public Resources Code section 21102 and 21150; California Code of Regulations, title 14, section 15262 (feasibility and planning studies); Government Code section 65995.6 (school facilities needs analysis); Categorical exceptions: California Code of Regulations, title 14, section 15323 (normal operations of existing facilities for public gatherings); California Code of Regulations, title 14, section 15322 (educational or training programs involving no physical changes); California Code of Regulations, title 14, section 15312 (sales of surplus government property); California Code of Regulations, title 14, section 15327 (leasing of new facilities); California Code of Regulations, title 14, 21080, subdivision (b)(5); California Code of Regulations, title 14, section 15270 (disapproved projects).

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B) (i) Mechanical systems, including heating, ventilation, and air-conditioning systems, are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

(F) Hazardous and flammable materials are stored properly. No evidence of peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or asbestos exposure are evident. There is no apparent evidence of hazardous materials that may pose a threat to the health and safety of pupils or staff.

(G) Structures, including posts, beams, supports for portable classrooms and ramps, and other structural building members appear intact, secure, and functional as designed. Ceilings and floors are not sloping or sagging beyond their intended design. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines structural components.

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

(I) Electrical systems, components, and equipment, including switches, junction boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly covered and guarded from pupil access, and appear to be working properly.

(J) Lighting appears to be adequate and working properly. Lights do not flicker, dim, or malfunction, and there is no unusual hum or noise from light fixtures. Exterior lights onsite appear to be working properly.

(K) No visible or odorous indicators of pest or vermin infestation are evident.

(L) Interior and exterior drinking fountains are functional, accessible, and free of leaks. Drinking fountain water pressure is adequate. Fountain water is clear

and without unusual taste or odor, and moss, mold, or excessive staining is not evident.

(M) (i) Restrooms and restroom fixtures are functional.

(ii) Appear to be maintained and stocked with supplies regularly.

(iii) Appear to be accessible to pupils during the school day.

(iv) Appear to be in compliance with Education Code Section 35292.5.

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly, and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that the school is in session.

With regard to community college districts, Education Code section 81601 states:

> The governing board of a community college district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. ...

Education Code section 81601 does not define "good repair" nor is it defined elsewhere under Title 3 of the Education Code, which contains the provisions regarding community college districts. However, since "property" includes "any external thing over which the rights of possession, use, and enjoyment are exercised,"[132] the requirement to repair includes real property as well as facilities owned by the district. Moreover, because the term "repair" is defined as "to restore to sound condition after damage or injury" and "to renew or refresh,"[133] staff finds that "repair" includes "maintenance" for purposes of these provisions. Thus, both school districts

[132] Black's Law Dictionary, Seventh Edition, 1999, page 1232, column 2.

[133] Webster's II, New Collegiate Dictionary, 1999, page 939, column 2.

and community college districts are required by statute to maintain their property.[134] The requirement to keep school facilities in good repair necessarily includes making necessary emergency repairs, such as those caused by, among other things, earthquakes, floods, and fires.

Moreover, school and community college maintenance projects, including emergency repair projects, are projects subject to CEQA. Note also that, as will be discussed in greater detail below, though emergency repairs are part of "maintenance" for the purposes of Education Code sections 17002, 17565, 17593 and 81601, "maintenance" and "emergency" projects are treated differently from one another, for purposes of CEQA.

2. *But Emergency Projects and Other Projects Related to Maintenance are Statutorily Exempt From CEQA.*

There are two kinds of exemptions from CEQA: statutory and categorical. Statutory exemptions describe types of projects which the Legislature has decided are not subject to CEQA procedures and policies and these exemptions are absolute. Statutory exemptions are found in various places in the California Code and are comprehensively listed in Article 18 of the CEQA Guidelines. Categorical exemptions, on the other hand, are descriptions of types of projects which the Secretary of the Resources Agency has determined do not usually have a significant effect on the environment. These exemptions are not absolute; there are exceptions to categorical exemptions. Under CEQA the filing of a NOE is discretionary; however, it triggers a 35-day, statute of limitations for a legal challenge to the lead agency's decision that the project is exempt.[135]

Statutory exemptions take several forms. Most statutory exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance. Examples of some of the statutory exemptions potentially applicable to school projects include:

- THE CLOSING OF OR THE TRANSFER OF STUDENTS FROM ANY PUBLIC SCHOOL. This includes the transfer of K-12 grade students to another school as set forth in section 21080.18 of the Public Resources Code so long as the resulting physical changes are categorically exempt from CEQA.[136]
- ESTABLISHING OR MODIFYING FEES.[137]
- ISSUING OR REFUNDING BONDS UNDER THE CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY ACT. Note though that development projects funded by these bonds are still subject to CEQA unless they fall under an exemption.
- EMERGENCY PROJECTS.
    - Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the

[134] Note that this analysis uses the words "maintenance" and "repair" interchangeably.

[135] California Code of Regulations, title 14, section 15062.

[136] California Code of Regulations, title 14, section 15282.

[137] Public Resources Code section 21080, subdivision (b)(8).

California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Public Resources Code section 5028, subdivision (b).

- Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.
- Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.[138]

3. *Maintenance Projects Are Categorically Exempt from CEQA.*

The following are some of the categorical exemptions that can be utilized by school districts and community college districts for maintenance projects:

- OPERATION, REPAIR, MAINTENANCE, AND RECONSTRUCTION. This exemption covers the operation, repair, permitting, leasing, licensing, or minor alteration of existing structures or facilities, mechanical equipment, or topographical features. This exemption is limited to negligible or no expansion of previous use and may includes among other things:
  - Interior or exterior repairs and alterations
  - Facilities used to provide public utilities services
  - Small additions
  - Addition of safety or health protection devices
  - Maintenance of certain facilities to protect fish and wildlife resources.[139]
- REPLACEMENT OR RECONSTRUCTION OF EXISTING FACILITIES OR STRUCTURES. This exemption is limited to structures on the same site with substantially the same purpose and capacity as the existing structure. One example given is the replacement or reconstruction of schools with earthquake resistant structures that do not increase the structural capacity by more that 50 percent.[140]
- CONSTRUCTION OR PLACEMENT OF ACCESSORY STRUCTURES. Examples are on-premises signs, small parking lots, and seasonal or temporary use structures in facilities designed for public use such as lifeguard towers, mobile

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[138] Public Resources Code sections 21080(b)(2), (3), and (4), 21080.33 and 21172; California Code of Regulations, title 14, section 15269; See also *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

[139] California Code of Regulations, title 14, section 15301.

[140] California Code of Regulations, title 14, section 15302.

food units and portable restrooms.[141]

- MINOR ALTERATIONS TO LAND, WATER, OR VEGETATION. The alterations may not involve removal of mature, scenic trees. Examples include grading on land with less than 10 percent slope that does not involve an environmentally sensitive area or severe geological hazards; new landscaping or gardening; minor trenching or backfilling of previously excavated earth with compatible material; minor temporary uses of land having negligible effects on the environment (e.g. carnivals and Christmas tree sales).[142]
- MINOR ADDITIONS TO SCHOOLS. Limited to additions (including permanent or temporary classrooms) within current school grounds and must not increase student capacity by more than 25 percent or ten classrooms, whichever is less.[143]
- COMMON SENSE EXCEPTION. This exemption is based on the general rule that CEQA only applies to projects which have a potential for causing a significant effect on the environment. Under this exemption a lead agency may find a project exempt if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."[144] This exemption acts as a "catchall" exception in that projects that do not fit under any of the statutory or categorical exemptions may nonetheless be exempt under this provision.

There is no evidence in the record to dispute the conclusion that school district and community college district maintenance projects and emergency repair projects are exempt from CEQA. Moreover, staff searched the CEQAnet database maintained by OPR at www.ceqanet.ca.gov, for school district and community college district environmental documents filed between 1982 to the present and did not find an instance in which a school has prepared an ND or EIR for an emergency or maintenance project.

Based upon the forgoing discussion of the applicable exemptions, staff finds that for school district and community college district maintenance and emergency projects, CEQA does not impose a state-mandated program.

C. For all other school district and community college district projects, CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project.

As discussed in the background, under CEQA a "project" is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is, in the context of school district and community college district projects:

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[141] California Code of Regulations, title 14, section 15311.

[142] California Code of Regulations, title 14, section 15304.

[143] California Code of Regulations, title 14, section 15314.

[144] California Code of Regulations, title 14, section 15061, subdivision (b)(3).

- an activity directly undertaken by the district, or,
- an activity undertaken by a district which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

The decision to undertake such projects could arise in a myriad of ways, from a district-level decision to an initiative enacted by the voters. Likewise, there are a number of funding sources that a school district or community college district might utilize to fund discretionary school construction projects. When a state funding source is used, proof of compliance with CEQA is a condition of funding.

1. *All non-maintenance, non-emergency school projects are at the discretion of the school districts or community college districts and thus, compliance with CEQA for these projects is not legally compelled by the state.*

Aside from the statutory requirement to maintain school and college facilities in good repair, the state has not required districts to undertake other construction projects that *do not* involve repair or maintenance. In comments filed March 31, 2004, however, claimant argues that "constructing new school facilities is not optional."[145] In support of this contention, claimant cites to *Butt v. State of California*[146] for the propositions that the state has a responsibility to "provide for a system of common schools, by which a school shall be kept up and supported in each district" and that those schools are required to be "free."

Staff disagrees with the claimant's argument that "constructing new school facilities is not optional." With regard to new construction of school buildings, the Second District Court of Appeal has stated: "[w]here, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine."[147]

It is true, as claimant states, that courts have consistently held public education to be a matter of statewide rather than a local or municipal concern, and that the Legislature's power over the public school system is plenary.[148] These conclusions are true for every Education Code statute that comes before the Commission on the question of reimbursement under article XIII B, section 6 of the California Constitution. It is also true that the state is the beneficial owner of all school properties and that local school districts hold title as trustee for the state.[149]

Nevertheless, article IX, section 14 of the California Constitution allows the Legislature to authorize the governing boards of all school districts to initiate and carry on any program or activity, or to act in any manner that is not in conflict with state law. In this respect, it has been and continues to be the legislative policy of the state to strengthen and encourage local

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[145] Claimant's Response to DOF Comments, March 31, 2004, p. 2.

[146] *Butt v. State of California* (1992) 4 Cal. 4th 688.

[147] *People v. Oken* (1958)159 Cal.App.2d 456, 460.

[148] See *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1579, fn. 5; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524 (formerly known as *California Teachers Assn. v. Huff*); *Hall v. City of Taft* (1956) 47 Cal.2d 177, 179.

[149] *Hayes v. Commission on State Mandates, supra*, 11 Cal.App.4th 1564, 1579, fn. 5.

responsibility for control of public education through local school districts.[150] The governing boards of K-12 school districts may hold and convey property for the use and benefit of the school district.[151] Governing boards of K-12 school districts have also been given broad authority by the Legislature to decide when to build and maintain a schoolhouse and, "when desirable, may establish additional schools in the district."[152] Governing boards of community college districts are required to manage and control all school property within their districts, and have the power to acquire and improve property for school purposes.[153] Thus, under state law, the decision to construct a school facility lies with the governing boards of school districts and community college districts, and is not legally compelled by the state.

Additionally, there are no statutes or regulations requiring the governing boards of school districts to construct new buildings or reconstruct unsafe buildings. The decision to reconstruct, or even abandon an unsafe building, is a decision left to the discretion of a school district. In *Santa Barbara School District v. Superior Court*, the California Supreme Court addressed a school district's decision to abandon two of its schools that were determined unsafe, instead of reconstructing a new building, as part of its desegregation plan.[154] The court held that absent proof that there were no school facilities to absorb the students, the school district, "in the reasonable exercise of its discretion, could lawfully take this action."[155] The court describes the facts and the district's decision as follows:

> On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503 [a former statute with language similar to Education Code sections 17367 and 81162]. The report recommended that a structural engineer be retained to determine whether the school should be repaired or abandoned, since if it cannot be repaired, it must be abandoned pursuant to section 15516. On May 15, 1972, three days before the final meeting of the Board, the superintendent received a report concerning the rehabilitation or replacement costs of the Jefferson school. The report found that it would cost $621,800 to make the existing structure safe and $655,000 to build an entirely new building. Accordingly, in fashioning the Administration Plan, the superintendent made provision therein for closing the Jefferson school. The Board would certainly be properly exercising its discretion in a reasonable

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[150] *California Teachers Assn., supra*, 5 Cal.App.4th 1513, 1523; Education Code section 14000.

[151] Education Code sections 35162.

[152] Education Code sections 17340, 17342.

[153] Education Code sections 81600, 81606, 81670 et seq., 81702 et seq.

[154] *Santa Barbara School District v. Superior Court* (1975) 13 Cal.3d 315, 337-338. As a side note, the decision to abandon or reconstruct a school is exempt from CEQA. See Public Resources Code section 21080.17, California Code of Regulations, title 14, sections 15282, subdivision (i) and 15302. See also *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356 (decision to close school and transfer students exempt from CEQA).

[155] Id, p. 338.

> manner were it to approve abandoning this building in view of the extreme cost. The determination of the questions whether a new school was needed to replace this structure or whether existing facilities could handle the Jefferson school students due to an expected drop in elementary enrollment, was properly within the Board's discretion.[156]

Thus, school districts are not legally compelled to construct new school facilities in these circumstances. Based on the above analysis, staff finds that CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project subject to CEQA and thus, school districts and community college districts are not legally compelled to comply with CEQA.

2. *Although CEQA compliance is a downstream activity required as a condition of receipt of state funding, school districts and community college districts are not required or legally compelled by the state to request or accept state funding or to comply with CEQA under these circumstances.*

Since 1972, Public Resources Code section 21102 has specifically prohibited a state agency, board or commission from authorizing expenditure of funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such request or authorization is accompanied by an EIR. Public Resources Code section 21102, which has not been amended since 1972 specifies:

> No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which may have a significant effect on the environment unless such request or authorization is accompanied by an environmental impact report.
>
> Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

Additionally, and also since 1972, Public Resources Code section 21150 has specified that:

> State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

Thus, if a school district or community college district wishes to receive state or federal funding through the state for a project, compliance with CEQA is a prerequisite.

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[156] Id, p. 337.

Consistent with the Public Resource Code 21102 and 21150 requirements, Education Code section 17025, subdivision (b) requires certification of CEQA compliance as a condition of bond funding for K-12 school districts. Similarly, Education Code section 17268, subdivision (b) requires school districts to comply with CEQA as a condition of receiving state funds for the construction of new school buildings.

Public Resources Code sections 21102 and 21150 make clear that state agencies must require compliance with CEQA and the CEQA regulations (i.e. the requirements of the test claim statutes and regulations) as a condition of providing state funding for any school district or community college district project that is subject to CEQA. However, there is no requirement that a school district or community college district seek funding from the state.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.[157]

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[158] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."[159] The court also reviewed and affirmed the holding of *City of Merced,*[160] determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[161] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[162] (Emphasis in original.)

Thus, the Supreme Court held as follows:

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[157] *Kern High School Dist., supra*, 30 Cal.4th 727.

[158] Id. at p. 737.

[159] Ibid.

[160] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[161] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

[162] Ibid.

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][163]

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.[164]

Similarly here, school districts and community college districts are not legally compelled to request and accept state funds for discretionary construction projects. However, if districts choose to receive state funds then, based upon the plain language of Public Resources Code section 21150, the state must require compliance with CEQA and the CEQA regulations as a condition of receiving state funding for school district and community college district projects. Public Resources Code section 21150 states: "State agencies. . . .responsible for allocating state or federal funds . . . . to local agencies for any project which may have a significant effect on the environment, *shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds* other than funds solely for projects involving only feasibility or planning studies for possible future actions." (Emphasis added.)

The financing of school facilities has traditionally been the responsibility of local government, with *assistance* provided by the state. In 1985, the California Supreme Court decided *Candid Enterprises, Inc. v. Grossmont Union High School District*, which provides a good historical summary of school facility funding up until that time.[165]

> In California the financing of public school facilities has traditionally been the responsibility of local government. "Before the *Serrano v. Priest* decision in 1971, school districts supported their activities mainly by levying ad valorem taxes on real property within their districts." [Citation omitted.] Specifically, although school districts had received some state assistance since 1947, and especially since 1952 with the enactment of the State School Building Aid Law of 1952 (Ed. Code, § 16000 et seq.), they financed the construction and maintenance of school facilities through the issuance of local bonds repaid from real property taxes.
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> After the *Serrano* decision [citation omitted] and to the present day, local government remained primarily responsible for school facility financing, but has often been thrust into circumstances in which it has been able to discharge its responsibility, if at all, only with the greatest difficulty. In these years, the burden

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[163] Id. at p. 731.

[164] Id. at pp. 744-745.

[165] *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878.

on different localities has been different: extremely heavy on those that have experienced growth in enrollment, light on those that have experienced decline, and somewhere in between on those that have remained stable.

In the early 1970's, because of resistance to increasing real property taxes, localities throughout the state began to experience greater difficulty in obtaining voter approval of bond issues to finance school facility construction and maintenance. As a result, a number of communities chose to impose on developers school-impact fees ... in order to make new development cover the costs of school facilities attributable to it. [Citation omitted.]

With the passage of Proposition 13 in 1978 the burden of school financing became even heavier. "Proposition 13 prohibits ad valorem property taxes in excess of 1% except to finance previously authorized indebtedness. Since most localities have reached this 1% limit, school districts cannot raise property taxes even if two-thirds of a district's voters wanted to finance school construction." [Citation omitted.] Moreover, although Proposition 13 authorizes the imposition of "special taxes" by a vote of two-thirds of the electorate, such special taxes have rarely been imposed, remain novel, and as consequence are evidently not perceived as a practical method of school facility financing – especially in view of the need for a two-thirds vote of the electorate to approve them. [Citation omitted.]

In the face of such difficulties besetting local governments, the state has not taken over any substantial part of the responsibility of financing school facilities, less still full responsibility. To be sure, in order to implement the *Serrano* decision the Legislature has significantly increased assistance to education. But it has channeled by far the greater part of such assistance into educational programs and the lesser part into school facilities; in fiscal year 1981-1982, for example, only 3.6 percent went for such facilities. [Citation omitted.][166]

State assistance for construction of school facilities comes almost exclusively from statewide general obligation bonds, and is implemented through the State Allocation Board.[167] Before Proposition 13, the state bond funds provided to school districts were provided through loan programs in which districts were required to repay their assistance with property tax revenues or local bond funds. After Proposition 13, the State Allocation Board shifted its policy of providing bond fund assistance from a loan-based program to a grant-based program.[168] Today, the grant funds are provided through the School Facility Program (SFP), under the provisions of the Leroy F. Greene School Facilities Act of 1998.[169] Under the SFP, state bond funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and

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[166] Id, pp. 881-882. See also "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," supra.

[167] See also "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," supra.

[168] "School Facility Financing, A History of the Role of the State Allocation Board and Option for the Distribution of Proposition 1A Funds," supra, pp. 12, 13, 20.

[169] Education Code, section 17170.10 et seq.

other project specific costs when warranted.[170] New construction grants provide funding on a 50/50 state and local match basis. Modernization grants provide funding on a 60/40 basis. Districts that are unable to provide local matching funds and are able to meet the financial hardship provisions may be eligible for state funding of up to 100 percent.[171]

Though there is substantial funding made available to school districts through state grants, not all school districts elect to receive assistance from state funds for construction of school buildings. The "School Facility Financing" handbook prepared in February 1999 states, that:

> If a school district wants state funding for construction or repair of a school, it must apply to the State Allocation Board for the money. *There are school districts that repair and construct school buildings without the assistance from the State Allocation Board* (i.e., San Diego Unified School District, San Luis Unified School District). (Emphasis added.)[172]

Therefore, staff finds that school districts are not legally compelled to request or accept state funding or to comply with CEQA requirements under these circumstances.

3. *There is no evidence in the record that school districts or community college districts are practically compelled to undertake non-maintenance or non-emergency projects or receive state funding.*

In comments filed March 31, 2004, claimant notes that "a finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate" and cites to *Sacramento II* as controlling case law.[173] Claimant relies on a study and Proposition 55 ballot language, both of which state a need to build more schools in California, to demonstrate that school districts are practically compelled to construct new school facilities when existing facilities become inadequate.[174] However, the question before the Commission is not whether additional school facilities are needed, but whether school districts are legally compelled by a state statute or regulation or practically compelled to build them and thus mandated by the state to comply with CEQA. As discussed above, staff finds that school districts and community college districts are not legally compelled to build new facilities or receive state funding for such facilities.

Claimant argues that school districts and community college districts are practically compelled to construct new facilities. Staff finds that school districts are not practically compelled by the state to construct new facilities or use state funds. The proper standard for determining whether

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[170] School Facility Program Handbook, supra, p. 23.

[171] Id. p. 61.

[172] School Facility Program Handbook, February 1999, endnote 2, p. 39.

[173] Claimant's Response to DOF Comments, supra, p. 4, citing *City of Sacramento v. State of California* (1990) 50 Cal.3rd. 51 (*Sacramento II*).

[174] Claimant's Response to DOF Comments, supra, pp. 3-4, citing "School Facility Financing-A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds" (Cohen, Joel, February 1999.) and Proposition 55 Ballot Pamphlet from 2004, which identified a need to construct schools to house one million pupils and modernize schools for an additional 1.1 million students.

school districts and community college districts are practically compelled to undertake school construction projects is the *Kern*[175] standard.

Absent legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern,* the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.[176] Rather, local entities that have discretion will make the choices that are ultimately the most beneficial for the entity and its community:

> As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the [new] requirements or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits. (Emphasis in original.)[177]

Here, there is no evidence in the law or in the record that school districts or community college districts that elect not to construct new facilities or use state funds, which would trigger the requirement to comply with CEQA, face certain and severe penalties such as double taxation or other draconian consequences. Instead, school and college facilities projects that are undertaken for purposes other than repair and maintenance are discretionary decisions of the district, analogous to the situation in *City of Merced.* There, the issue before the court was whether reimbursement was required for new statutory costs imposed on the local agency to pay a property owner for loss of goodwill, when a local agency exercised the power of eminent domain.[178] The court stated:

> Whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised,

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[175] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, hereinafter "*Kern*".

[176] *Kern,* supra, 30 Cal.4th 727, 754.

[177] Id, p. 753.

[178] *City of Merced, supra,* (1984) 153 Cal.App.3d 777, 777.

> then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[179]

The Supreme Court in *Kern* reaffirmed the *City of Merced* rule in applying it to voluntary education-related funded programs:

> The truer analogy between [*Merced*] and the present case is this: In *City of Merced*, the city was under no legal compulsion to resort to eminent domain – but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.[180]

The Code of Civil Procedure provision that was cited in *City of Merced* states:

> Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.[181]

The Law Revision Commission's comment on this provision stated:

> Section 1230.030 makes clear that whether property is to be acquired by purchase or other means, or by exercise of the power of eminent domain, is a discretionary decision. Nothing in this title requires that the power of eminent domain be exercised; but, if the decision is that the power of eminent domain is to be used to acquire property for public use, the provisions of this title apply except as otherwise specifically provided by statute. ...[182]

The holding in *City of Merced* applies in this instance. Any costs incurred under CEQA or the CEQA regulations sections pled (excepting Public Resources Code section 21082, as amended by Statutes 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29) result from the school district's or community college district's decision to undertake a project to construct or reconstruct school facilities, rather than from a decision made by the state. Under such circumstances, reimbursement is not required.[183]

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[179] Id. at 783.

[180] *Kern, supra,* 30 Cal.4th 727, 743.

[181] Code of Civil Procedure section 1230.030.

[182] California Law Revision Commission comment on Code of Civil Procedure section 1230.030, 2009 Thomson Reuters.

[183] *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 880.

Therefore, based on the above discussion, staff finds that the state has required school districts and community college districts are not practically compelled to undertake discretionary projects subject to CEQA.

D. The Plain Language of Public Resources Code Section 21082, as Amended by Statutes of 1976, chapter 1312 and California Code of Regulations, Title 14 Section 15022, Subdivision (a), as Amended by Register 83, No. 29, Imposes a State-Mandated Activity.

Staff finds that Public Resources Code section 21082, as amended by Statutes of 1976, chapter 1312, and California Code of Regulations, title 14 section 15022, subdivision (a), as amended by Register 83, No. 29, mandate school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs, by ordinance, resolution, rule or regulation, no later than 60 days after the Secretary of the Resources Agency adopts regulations (i.e. the CEQA Guidelines) pursuant to Public Resources Code section 21083.

As stated under Issue 2, above, the Commission does not have jurisdiction over Public Resources Code section 21082, as added by Statutes of 1972, chapter 1154 which provided:

> All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

Current law, Public Resources Code section 21082, as amended by Statutes of 1976, chapter 1312, provides:

> All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports *and negative declarations* pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083. (Italics added to indicate amended language.)

Public Resources Code section 21082 has been amended twice since its enactment in 1972: in 1975 and 1976. Statutes 1975, chapter 242, which was not pled in this test claim, amended Public Resources Code section 21082, adding the second full sentence which allows districts

(including school districts and community college districts) whose boundaries are coterminous with a city, county, or city and county, to utilize the objectives, criteria, and procedures of the city, county, or city and county, in lieu of adopting its own. The 1975 amendment merely provides an optional alternate means of compliance, and does not mandate any new activities. However, Public Resources Code section 21082 was amended by Statutes 1976, chapter 1312, which has been pled in this test claim and which the Commission does have jurisdiction over, to add the words "and negative declarations" to what must be included in a public agency's objectives, criteria and procedures.

Similarly current California Code of Regulations, title 14 section 15022, subdivision (a), as amended by Register 83, No. 29, states:

> Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. The implementing procedures *should* contain at least provisions for: . . . .

(List of subjects recommended for inclusion omitted; emphasis added.)

CEQA has required OPR to review the CEQA regulations and prepare amendments to CEQA regulations and has required the Secretary of the Resources Agency to adopt the regulations since 1972.[184] Public Resources Code section 21083 requires OPR to review the CEQA regulations at least every two years and to prepare amendments to the regulations. It also requires the Secretary of Resources to adopt the regulations which triggers the requirement of Public Resources Code section 21082 as amended by Statutes of 1976, chapter 1312, for school districts and community college districts to adopt objectives, criteria, and procedures for NDs. This continuing requirement is not triggered by any action of a school district or community college and is not dependant on the existence of any development project.[185]

However, the California Code of Regulations, title 14, section 15022, subdivision (a) list of what the implementing procedures "should" include is advisory and thus does not impose any mandated activities. California Code of Regulations, title 14, section 15005 defines words as "mandatory, advisory or permissive." Specifically, it defines "must" or "shall" as mandatory, "should" as advisory and "may" as permissive for purposes of the CEQA regulations. With regard to the word "should" California Code of Regulations, title 14, section 15005, subdivision (b) provides:

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[184] See the requirements of Public Resources Code section 21087, as adopted by Statutes of 1972, chapter 1154 which were amended into Public Resources Code section 21083 by Statutes 2004, chapter 945; note that the amendment to Public Resources Code section 21087 requiring review at least every two years (rather than periodic review) was adopted by Statutes of 1993, chapter 1130.

[185] Note however, that the Public Resources Code section 21083 requirement for OPR to review and propose amendments to the CEQA regulations at least every two years was supported by local agencies because of concerns that the regulations were not being revised often enough to keep up with the statutory changes and case law developments that local agencies are required to comply with. (See Senate Floor Analysis, Assembly Bill 1888 (Sher), September 9, 1993.)

"Should" identifies *guidance* provided by the Secretary of Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are *advised* to follow this guidance in the absence of compelling, countervailing considerations.

"Advisory" means "counseling, suggesting, or advising, but not imperative or conclusive."[186] Therefore, because the list provided by 15022, subdivision (a) of what the implementing procedures "should" include is advisory, it does not impose any mandated activities.

Staff finds that the plain language of Public Resources Code section 21082 as amended by Statutes of 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, subdivision (a) as amended by Register 83, No. 29, imposes the following state-mandated activity on school districts and community college districts:

Adopting objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs, by ordinance, resolution, rule or regulation, no later than 60 days after the Secretary of the Resources Agency adopts the CEQA regulations pursuant to Public Resources Code section 21083.

Issue 4: Do Public Resources Code Section 21082, as Amended by Statutes of 1976, Chapter 1312, or California Code of Regulations, Title 14, Section 15022 as Amended by Register 83, No. 29 Impose a New Program or Higher Level of Service on School Districts or Community College Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution?

Staff finds that the plain language of Public Resources Code section 21082 as amended by Statutes of 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, subdivision (a), as amended by Register 83, No. 29 mandate school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA Guidelines, for the preparation NDs, by ordinance, resolution, rule or regulation, no later than 60 days after the Secretary of the Resources Agency adopts the CEQA regulations (i.e. the CEQA Guidelines) pursuant to Public Resources Code section 21083. However, staff finds that Public Resources Code section 21082, as amended by Statutes of 1976, chapter 1312, and California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29 do not impose a new program or higher level of service on school districts and community college districts because:

- The Public Resources Code Section 21082 requirement for school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs by ordinance, resolution, rule or regulation, added in 1976, was a clarification of existing law regarding "evaluation of projects" and therefore does not impose a new program or higher level of service.
- The requirement of California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29, for school districts and community college districts to adopt objectives, criteria, and procedures, for the evaluation of projects and the preparation of

[186] Black's Law Dictionary, Sixth edition.

environmental documents pursuant to CEQA was required by CEQA before January 1, 1975 and therefore does not impose a new program or higher level of service.

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at *state-mandated increases in the services* provided by local agencies.[187] In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[188] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[189] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are *required acts. These requirements constitute a higher level of service*. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[190] [191]

Thus, in order for Public Resources Code section 21082 as amended by Statutes of 1976, chapter 1312, or California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29, to impose a new program or higher level of service, the Commission must find that the state is imposing new required acts or activities on school districts and community college districts to adopt objectives, criteria and procedures for NDs beyond those already required by law.

A. The Statutes of 1976, Chapter 1312 Amendment of Public Resources Code Section 21082, Adding "Negative Declarations," Was A Clarification of Existing Law

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[187] *County of Los Angeles, supra*, 43 Cal.3d at page 56.

[188] *Long Beach Unified School District, supra,* 225 Cal.App.3rd 155.

[189] Id, p. 173.

[190] Ibid, emphasis added.

[191] See also, *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, where the Second District Court of Appeal followed the earlier rulings and held that in the case of an existing program, reimbursement is required only when the state is divesting itself of its responsibility to provide fiscal support for a program, or is forcing a new program on a locality for which it is ill-equipped to allocate funding.

Regarding "Evaluation of Projects" and Therefore Does Not Impose a New Program or Higher Level of Service.

Current law, Public Resources Code section 21082, as amended by Statutes of 1976, chapter 1312, provides:

> All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports *and negative declarations* pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083. (Italics added to indicate amended language.)

This amendment added the words "and negative declarations" which requires school districts and community college districts to address NDs in the objectives, criteria and procedures that they must adopt by ordinance, resolution, rule, or regulation.

In order for the Statutes of 1976, chapter 1312 amendment, which requires school districts and community college districts to address NDs in the objectives, criteria and procedures that they must adopt by ordinance, resolution, rule, or regulation to impose a new program or higher level of service, the Commission must find that the state is imposing new required acts or activities on school districts and community college districts beyond those already required by law. For the reasons described below, staff finds that school districts and community college districts have been required to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs by ordinance, resolution, rule or regulation under CEQA since 1972, before the enactment of the Statutes of 1976, chapter 1312.

The intent to change the law may not always be presumed by an amendment. The courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made ... changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][192]

Under the rules of statutory construction, the first step is to look at the statute's words and give them their plain and ordinary meaning. Where the words of the statute are not ambiguous, they must be applied as written and may not be altered in any way. Moreover, the intent must be

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[192] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

gathered with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.[193]

Public Resources Code section 21082, as added by Statutes of 1972, imposed the requirement to "adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to [CEQA]."[194] Section 21082 does not specify exactly what is meant by "the evaluation of projects." However, when read in context with the whole system of law, of which this statute is a part, it becomes clear that under prior law, preparation of NDs was a required activity when a lead agency evaluated a project which was not exempt from CEQA, but which the lead agency determined would not have a significant effect on the environment.

To "evaluate" means "to determine the value of."[195] In the context of CEQA, the possible values assigned to activities or approvals of the lead agency are:[196]

- Project or not.[197]
- If a project, exempt or not.[198]
- If not exempt, whether it may have a significant effect on the environment or will not have a significant effect on the environment.[199]
- ND or EIR.[200]

Thus, the determination regarding whether to prepare an EIR or an ND is a part of project evaluation. In *No Oil,* the California Supreme Court, in a decision regarding a 1972 project approval by the Los Angeles City Council, held that:

- an agency must determine whether a project may have a significant environmental impact, and thus whether an EIR is required, before it approves the project; and,
- a determination that a project does not require an EIR, when that project is not exempt from CEQA, must take the form of a written ND.[201]

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[193] *People v. Thomas* (1992) 4 Cal.4th 206, 210.

[194] See Public Resources Code Section 21082, as enacted in Statutes 1972, chapter 1154.

[195] Webster's II New Riverside Dictionary.

[196] For a good overview of the CEQA project evaluation process see the California Resources Agency, CEQA Process Flowchart. http://ceres.ca.gov/ceqa/flowchart/index.html.

[197] Public Resources Code section 21065; California Code of Regulations, title 14, section 15378.

[198] Public Resources Code sections 21080-21080.33, 21084; California Code of Regulations, title 14, sections 15300-15329.

[199] Public Resources Code sections 21080, 21080.1; California Code of Regulations, title 14, sections 15060 subdivision (c), 15063, 15064, 15064.7, 15065, 15365.

[200] Public Resources Code section 21080; California Code of Regulations, title 14, section 15070.

[201] *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, pp. 79-80. (Hereinafter, *No Oil*).

In reaching these holdings, the *No Oil* court considered federal court opinions construing the National Environmental Policy Act (NEPA) on which CEQA was modeled, the federal NEPA guidelines, and California Code of Regulations, title 14, section 15083, regarding NDs, which did not take effect until 1973. The *No Oil* court stated that these holdings were consistent with "the unanimous view of the federal courts construing [NEPA], and the explicit requirement of both federal and state guidelines."[202] With regard to consideration of the CEQA regulations, the court stated "we do not apply these [regulations] retroactively to the decisions of the court or the city council rendered before the [regulations] went into effect. We make use of the [regulations], however, as a suggested interpretation of the statute, and as an illustration of the procedures which the resources agency finds necessary to the enforcement of the statute."[203] Moreover, the court stated, "the requirement that a finding of no significant impact take the form of an express written determination, however, is implicit in the act itself, and could have been deduced in October of 1972 from examination of the act, from our decision in *Friends of Mammoth* [citations] and from the federal cases cited in that decision."[204]

Additionally, California Code of Regulations, title 14, Article 7 (entitled Evaluating Projects), section 15083 (Register 73, No. 50) was adopted in 1973. Section 15083 addressed the requirement to prepare a negative declaration and the procedures that must be followed for projects that are not exempt from CEQA which the lead agency finds will not have a significant effect on the environment.[205] Thus, the requirement to address NDs is not new. In fact, if a school district or community college district prior to the 1976 amendment of Public Resources Code section 21083, had prepared objectives, criteria, and procedures, for the evaluation of projects preparation of EIRs by ordinance, resolution, rule or regulation, without addressing NDs, its objectives, criteria, and procedures would not have been consistent with CEQA and the CEQA regulations. Therefore, because the requirement for school districts and community college districts to address NDs in their objectives, criteria, and procedures, for the evaluation of projects preparation of EIRs by ordinance, resolution, rule or regulation clarifies existing law that pre-dates January 1, 1975, Public Resources Code section 21082 as amended by Statutes of 1976, chapter 1312 does not impose a new program or higher level of service.

B. California Code of Regulations, Title 14, Section 15022 Does Not Impose a New Program or Higher Level of Service.

The current interpretative regulation for Public Resources Code section 21082, California Code of Regulations, title 14, section 15022, subdivision (a), as adopted by Register 83, No. 29, provides:

> Each public agency shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of

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[202] Id, p. 80.

[203] Id, p. 80.

[204] Id, p. 81.

[205] Title 14 California Code of Regulations, Article 7 (Evaluating Projects), section 15083 (Register 73, No. 50.)

> environmental documents. The implementing procedures *should* contain at least provisions for: . . . . [List of what the procedures should contain omitted.]

To determine whether California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29 imposes a new program or higher level of service, we must first look at the law as it existed immediately prior to July 16, 1983, the effective date of that amendment, to determine whether the amendment mandates new activities.[206] Utilizing the same principles of statutory construction and analysis as applied under "A." above, staff finds that school districts and community college districts have been continuously required to adopt objectives, criteria, and procedures that are consistent with CEQA and the CEQA regulations, by ordinance, resolution, rule, or regulation, for the evaluation of projects and the preparation of EIRs pursuant to CEQA since January 1, 1972.

The requirements of California Code of Regulations, title 14, section 15022, were originally adopted in Register 73, No. 50 in California Code of Regulations, title 14, section 15050. California Code of Regulations, title 14, section 15050, as originally adopted in Register 73, No. 50 simply said:

> All public agencies are responsible for complying with the CEQA according to these Guidelines. They must develop their own procedures consistent with these Guidelines. Where a public agency is a lead agency and prepares an EIR itself or contracts for the preparation, that public agency is responsible entirely for the adequacy and objectivity of the EIR.

California Code of Regulations, title 14, section 15050 was subsequently amended several times, each time adding more specificity. (See Registers 75, No.1; 76, No. 41; and, 80, No. 19.) The following language, which, with minor, non-substantive modifications appears in the current California Code of Regulations, title 14, section 15022, was amended into section 15050 by Register 76, No. 41:[207]

> Public agenc[ies] shall adopt objectives, criteria, and specific procedures consistent with CEQA and these Guidelines for . . .the orderly evaluation of projects and preparation of environmental documents. The[se] implementing procedures *should* contain at least [the following] provisions. . . . [List of what the procedures should contain omitted.]

As discussed in "A." above, the CEQA statutory provisions in place prior to January 1, 1975, required a school district or community college district to adopt objectives, criteria, and procedures consistent with CEQA and the CEQA regulations for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents. Therefore the requirement to adopt objectives, criteria, and procedures consistent to address the evaluation of projects and preparation of environmental documents (i.e. NDs and EIRs) is not new. The addition of the language "objectives, criteria, and specific procedures" and "evaluation of projects and preparation of environmental documents" though adding greater specificity to the regulation, simply reflects the language of

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[206] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[207] Note that the prior iterations of California Code of Regulations, title 14, section 15050 as amended by Registers 75, No.1; 76, No. 41; and, 80, No. 19 were also pled in this test claim.

the pre-existing statutory requirement under 21082 and thus does not impose a new program or higher level of service.

CONCLUSION

Staff concludes that the test claim statutes, regulations and alleged executive orders do not impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The California State Clearinghouse Handbook is not an executive order subject to Article XIII B, Section 6.
2. The Commission does not have jurisdiction over statutes adopted prior to January 1, 1975.
3. The statutes and regulations listed below, which generally require compliance with the CEQA process, do not mandate school districts or community college districts to perform any activities because:
   A. The plain language of Public Resources Code section 21083 imposes requirements on OPR and the Secretary of the Resources Agency, not school districts or community college districts.
   B. Although school districts and community college districts are required to undertake maintenance projects, including emergency repair projects, CEQA contains specific exemptions for maintenance projects and emergency projects.
   C. For all other school district and community college district projects, CEQA is triggered by the district's voluntary decision to undertake a project or accept state funding for a project.

   Education Code Section 17025 added by Statutes 1996, Chapter 1562; Government Code Sections 66031 and 66034 as amended by Statutes 1994, Chapter 300, and Statutes 1990, Chapter 1455; Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09, 21080.1, 21080.3, 21080.4, 21081, 21082.1, 21082.2, 21083, 21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5, 21092.6, 21094, 21100, 21151, 21151.2, 21151.8, 21152, 21153, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166, 21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by Statutes 1975, Chapter 222; Statutes 1976, Chapter 1312; Statutes 1977, Chapter 1200; Statutes 1983, Chapter 967; Statutes 1984, Chapter 571; Statutes 1985, Chapter 85; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 626; Statutes 1989, Chapter 659; Statutes 1991, Chapter 905; Statutes 1991, Chapter 1183; Statutes 1991, Chapter 1212; Statutes 93, Chapter 375; Statutes 1993, Chapter 1130; Statutes 1993, Chapter 1131; Statutes 1994, Chapter 1230; Statutes 1994, Chapter 1294; Statutes 1995, Chapter 801; Statutes 1996, Chapter 444; Statutes 1996, Chapter 547; Statutes 1997, Chapter 415; Statutes 2000, Chapter 738; Statutes 2001, Chapter 867; Statutes 2002, Chapter 1052; Statutes 2002, Chapter 1121; California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18; Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44 and California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5,

15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30.

4. Public Resources Code Section 21082, as amended by Statutes 1976, chapter 1312 and California Code of Regulations, title 14, section 15022, as amended by Register 83, No. 29 Do Not Impose a New Program or Higher Level of Service on School Districts and Community College Districts because:

   A. The Public Resources Code Section 21082 requirement for school districts and community college districts to adopt objectives, criteria, and procedures, consistent with CEQA and the CEQA regulations, for the preparation of NDs by ordinance, resolution, rule or regulation, added in 1976, was a clarification of existing law regarding "evaluation of projects" and therefore does not impose a new program or higher level of service.

   B. The requirement to adopt objectives, criteria, and procedures, for the evaluation of projects and the preparation of environmental documents pursuant to CEQA was required by the law as it existed immediately prior to the date that California Code of Regulations, title 14, section 15022 was adopted and has been continuously required by the Public Resources Code Section 21082 since January 1, 1973 and therefore does not impose a new program or higher level of service.

Staff Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

Glossary of Frequently Used CEQA Related Terms and Acronyms:

CEQA: California Environmental Quality Act	An Act with the purposes of informing decisionmakers and the public about project impacts, identifying ways to avoid or significantly reduce environmental damage, preventing environmental damage by requiring feasible alternatives or mitigation measures, disclosing to the public reasons why an agency approved a project if significant environmental effects are involved, involving public agencies in the process, and increasing public participation in the environmental review and the planning processes.
Categorical Exemption	An exemption from the requirement to prepare an EIR or negative declaration for classes of projects based on a finding that the listed classes of projects do not have a significant effect on the environment. See also statutory exemption below. (Pub. Resources Code §§ 21080(b)(10) and 21084; Cal. Code Regs., tit. 14, § 15354.)
Certification	The lead agency's determination that an EIR has been completed in compliance with CEQA, was reviewed and considered by the lead agency's decision-making body before action on the project, and reflects the agency's independent judgment and analysis.
Cumulative Impacts	Two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects. 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. (Pub. Resources Code § 21083(b); Cal. Code Regs., tit. 14, § 15355.)
EIR: Environmental Impact Report	A detailed statement prepared in accordance with CEQA whenever it is established that a project may have a potentially significant effect on the environment. The EIR describes a proposed project, analyzes potentially significant environmental effects of the proposed project, identifies a reasonable range of alternatives, and discusses possible ways to mitigate or avoid the significant environmental effects. EIR can refer to the draft EIR (DEIR) or the final EIR (FEIR) depending on context.

	(Pub. Resources Code §§ 21061, 21100 and 21151; Cal. Code Regs., tit. 14, § 15362.)
Initial Study	A lead agency's preliminary analysis of a project to determine whether it may have a significant effect on the environment. If it may have a significant effect, an EIR is required. If not, the project may be approved based on a negative declaration. (Pub. Resources Code §§ 21080.1, 21080.2, 21080.3 and 21100; Cal. Code Regs., tit. 14, § 15365.)
Lead Agency	The agency with primary responsibility for approving or carrying out a project. (Pub. Resources Code § Section 21165; Cal. Code Regs., tit. 14, § 15367.)
Local Agency	Any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, *school districts*, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency. (Pub. Resources Code § 21062 and 21151; Cal. Code Regs., tit. 14, § 15368.)
MND: Mitigated Negative Declaration	A negative declaration prepared when a project will not have a significant effect on the environment because the project's adverse effects have been mitigated by measures incorporated into the project. (Pub. Resources Code § 21064.5; Cal. Code Regs., tit. 14, § 15369.5.)
ND: Negative Declaration	A written statement by the lead agency that briefly states why a project subject to CEQA will not have a significant effect on the environment. A ND precludes the need for an EIR. (Pub. Resources Code § 21064; Cal. Code Regs., tit. 14, § 15371.)
NOC: Notice of Completion	A brief notice filed with the Office of Planning and Research (OPR) by a lead agency when it completes preparation of the DEIR and is prepared to make it available for public review. The filing of the NOC begins the public review period for the DEIR. (Pub. Resources Code § 21161; Cal. Code Regs., tit. 14, § 15372.)

NOD: Notice of Determination	A brief notice (usually 1 page) filed by the lead agency with the clerk of the county in which the project will be located and OPR. The notice is posted in the County Clerk's office for 30-days after an agency approves or determines to carry out a project subject to CEQA. The NOD is perhaps the most important notice under CEQA since it triggers the short statute of limitations for challenging a project for failure to comply with CEQA. (Pub. Resources Code §§ 21108(a) and 21152; Cal. Code Regs., tit. 14, § 15373.)
NOE: Notice of Exemption	A notice filed after the lead agency has determined that a project is exempt from CEQA and has approved that project. The filing of the NOE is not required, however, it triggers a short statute of limitations for a challenge to the decision that the project is exempt. Otherwise, the statute does not begin to run until the project has commenced (i.e. ground is broken). (Pub. Resources Code §§ 21108(b) and 21152(b); Cal. Code Regs., tit. 14, § 15374.)
NOP: Notice of Preparation	A notice by a lead agency that it plans to prepare an EIR for a project. This notice is sent to various state and federal agencies to seek guidance from those agencies on the scope and content of the EIR. (Pub. Resources Code § 21080.4; Cal. Code Regs., tit. 14, §§ 15082(a) and 15375.)
Project	The whole of an action that may result in either a direct physical change in the environment, or a reasonable foreseeable indirect physical chance in the environment. (Public Resources Code Guideline § 15378(a).) Projects include activities directly undertaken by public agencies as well as private projects that have any public funding or are permitted or approved by public agencies. (Pub. Resources Code § 21065; Cal. Code Regs., tit. 14, § 15378.)
Public Agency	All executive branch agencies and all local government agencies in California. The state legislature, courts and federal agencies are not public agencies for the purposes of CEQA. (Pub. Resources Code § 21063; Cal. Code Regs., tit. 14, § 15379.)
Responsible Agency	A public agency, other than the lead agency, that has some discretionary power to approve or carry out a project (usually has authority to grant a needed permit) for which the lead agency is preparing an EIR or ND. With few exceptions, responsible agencies are bound by the lead

	agency's determination of whether to prepare an EIR or ND and by the document prepared by the lead agency. (See Pub. Resources Code §§ 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2 and 21167.3; Cal. Code Regs., tit. 14, § 15381.)
Significant Effect on the Environment	A substantial or potentially substantial adverse change in the physical conditions of the area affected by the project. (Public Resources Code § 21068.) A substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant. (Pub. Resources Code §§ 21068, 21083, 21100 and 21151; Cal. Code Regs., tit. 14, § 15382.)

EXHIBIT G

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

November 12, 2009

RECEIVED
NOV 16 2009
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of October 23, 2009, the Department of Finance has reviewed the draft staff analysis for the test claim submitted by the Clovis Unified School District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and executive orders cited in the test claim are reimbursable State mandated costs (Claim No. CSM-03-TC-17 "California Environmental Quality Act").

We concur with the staff analysis for this claim, which finds that the proposed activities do not impose a new program or higher level of service, and therefore does not impose reimbursable costs mandated by the State.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 23, 2009, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Ryan Storm, Principal Program Budget Analyst, at (916) 445-0328.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachments

Attachment A

DECLARATION OF RYAN STORM
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-17

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

November 12, 2009
at Sacramento, CA

Ryan Storm

PROOF OF SERVICE

Test Claim Name: California Environmental Quality Act
Test Claim Number: CSM-03-TC-17

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7 Floor, Sacramento, CA 95814.

On November 12, 2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Clovis Unified School District
Attn: Mr. Michael Johnston
1450 Herndon Ave
Clovis, CA 93611-0599

Santa Monica Community College District
Attn: Ms. Cheryl Miller
1900 Pico Blvd.
Santa Monica, CA 90405-1628

A-8
Governor's Office of Planning and Research
Attn: Mr. Scott Morgan
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

Resources Agency
Attn: Mr. Kirk Miller
1416 9th Street, Suite 1311
Sacramento, CA 95814

G-1
California Community Colleges
Chancellor's Office
Attn: Mr. Steve Bruckman
1102 Q Street
Sacramento, CA 95814-6511

San Jose Unified School District
Attn: Mr. Patrick Day
855 Lenzen Avenue
San Jose, CA 95126-2736

B-8
State Controller's Office
Division of Audits
Attn: Mr. Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

B-29
Legislative Analyst's Office
Attn: Mr. Jim Soland
925 L Street, Suite 100
Sacramento, CA 95814

School Innovations & Advocacy
Attn: Mr. Mike Brown
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

San Diego Unified School District
Attn: Mr. Arthur Palkowitz
4100 Normal Street, Room 2148
San Diego, CA 92103-2682

Education Mandated Cost Network
Attn: Mr. Robert Miyashiro
1121 L Street, Suite 1060
Sacramento, CA 95814

Reynolds Consulting Group, Inc.
Attn: Ms. Sandy Reynolds
P.O. Box 894059
Temecula, CA 92589

Centration, Inc.
Attn: Ms. Beth Hunter
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

G-1
California Community Colleges
Chancellor's Office
Attn: Erik Skinner
1102 Q Street
Sacramento, CA 95814-6511

School Innovations & Advocacy
Attn: Mr. Joe Rombold
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

B-8
State Controller's Office
Division of Accounting and Reporting
Attn: Ms. Ginny Brummels
3301 C Street, Suite 500
Sacramento, CA 95816

SixTen & Associates
Attn: Mr. Keith B. Petersen
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834

Santa Monica Community College District
Attn: Chris Bonvenuto
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Mandate Resource Services, LLC
Attn: Ms. Harmeet Barkschat
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Shields Consulting Group, Inc.
Mr. Steve Shields
1536 36th Street
Sacramento, CA 95816

E-8
California Department of Education
Fiscal Policy Division
Attn: Ms. Carol Bingham
1430 N Street, Suite 5602
Sacramento, CA 95814

Mr. David E. Scribner
Max8550
2200 Sunrise Boulevard, Suite 220
Gold River, CA 95670

California School Management Group
Attn: Mr. David Cichella
3130-C Inland Empire Blvd.
Ontario, CA 91764

MGT of America
Attn: Ms. Jolene Tollenaar
2001 P Street, Suite 200
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 12, 2009 at Sacramento, California.

Annette Waite

Annette Waite

CLOVIS UNIFIED SCHOOL DISTRICT

Governing Board
Sandra A. Bengel
Christopher Casado
Brian D. Heryford
Ginny Hovsepian
Elizabeth J. Sandoval
F. Scott Troescher
Jim Van Volkinburg, D.D.S.

Administration
David E. Cash, Ed.D.
Superintendent
Michelle Steagall, Ed.D.
Associate Superintendent
Steve Ward
Associate Superintendent
Janet Young, Ed.D.
Associate Superintendent

November 12, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RE: *California Environment Quality Act, 03-TC -17*

Dear Ms. Higashi:

Claimant provides the following comments in response to the draft staff analysis (DSA).

The DSA states on page 41:

> Here, there is no evidence in the law or in the record that school districts or community college districts that elect not to construct new facilities or use state funds, which would trigger the requirement to comply with CEQA, face certain and severe penalties such as double taxation or other draconian consequences. Instead, school and college facilities projects that are undertaken for purposes other than repair and maintenance are discretionary decisions of the district...

The DSA incorrectly asserts the decision by a school district to construct or improve facilities is discretionary as oppose to legal compulsion. As will be discussed the application of the *City of Merced* [1] is also misplaced as the state is mandating local agencies to provide education to its resident students.

THE STATE MANDATES LOCAL AGENCIES PROVIDE EDUCATION

Proposition 55 appeared on the March 2, 2004 ballot which enacted the Kindergarten-University Public Education Facilities Bond Act of 2004. According to the official ballot information pamphlet prepared by the California Attorney General and published by the California Secretary of State, school districts identified a need to construct new schools to house nearly 1 million pupils and modernize schools for an additional 1.1 million pupils. For the DSA to conclude that school districts need not acquire new school sites or construct additional school facilities ignores the reality and the California Constitution that requires pupils be housed and educated.

[1] *City of Merced, supra,* (1984) 153 Cal.App.3d 777, 777.

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Legislative history shows repeated and consistent recognition that school districts are unable to meet the school construction needs of their pupils and that the education of school children is the primary responsibility of the state. The history of the inability of school districts and the obligation of the state to educate children results in the above recited litany of state money for school construction at low or no interest rates, repayment requirements of less than the amounts apportioned, and repayment terms unavailable anywhere else. Education of children is an obligation and function of the state. Classrooms are required to provide that education. Therefore, building classrooms is, primarily, a state obligation.

The California Research Bureau has published a study entitled "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds." (Cohen, Joel, February 1999) In the study, the plight of school districts is described therein as follows:

> "As California enters the 21st Century, its public schools face many challenges. One significant challenge is the serious disrepair of an aging school facility infrastructure. Another challenge is the anticipated growth of nearly 2 million K-12 students during the next decade that will require many districts to build new schools to meet burgeoning student demand." [2]

This independent study does not conclude school districts will have the discretion to build new schools, it concludes that districts will be required to build them to meet burgeoning demand.

The Department of Finance has estimated that $16 billion is needed over the next decade for public school construction and rehabilitation.... However, while the amount (provided by Proposition 1A) appears to be generous, it will not be enough to meet the entire anticipated need of the state. Based on the Department of Finance projections, the six years following this bond issue will require roughly an additional $10 billion in State money.[3]

Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code sets forth the State School Building Aid Law of 1949, commencing with Education Code Section 15700. Section 15700 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary and adequate school sites and buildings for the pupils of the public school system, the system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state. (Emphasis added)
>
> In adopting this act, the Legislature considers that the great need in school construction is for adequate classrooms for the education of the pupils of the public school system. To the end that school classrooms may be made available at once and to all school districts in need of such classrooms...

[2] Cohen, Joel, "School Facility Financing - A History of the Role of the State Allocation Board and Options for the Distribution of Proposition 1A Funds", California Research Bureau (February 1999)

[3] *Id.*

Chapter 6 contains the State School Building Aid Law of 1952, commencing with Education Code Section 16000. Section 16001 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary school sites and buildings for the pupils of the public school system, this system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state. (Emphasis added.)
>
> In adopting this chapter, the Legislature considers that the great need in school construction is for classrooms for the education of the pupils of the public school system. To the end that school classrooms may be made available at once and to all school districts in need of such classrooms...

Article 9 of Chapter 6, commencing with Education Code Section 16310, is entitled School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities. Section 16312 states:

> The Legislature hereby declares that it is in the interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities inasmuch as the education of children is an obligation of the state, and the obligation carries with it a corresponding responsibility for the physical safety of children while attending school. (Emphasis added.)

Chapter 8 of Part 10 contains the Urban School Construction Aid Law of 1968, commencing with Education Code Section 16700. Section 16701 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid urban school districts of the state in reconstructing, modernizing, or replacing school sites and buildings for pupils of the public school system who are now housed in substandard schools...

Chapter 12 of Part 10 establishes the "Leroy F. Greene State School Building Lease-Purchase Law of 1976", commencing with Section 17000. Section 17001 states:

> (a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new school sites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state. (Emphasis added.)

Chapter 15 of Part 10, commencing with Section 17100, established the School District Revenue Bond Act. This Act is based on the finding of the legislature that:

> The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts. (Emphasis added.)

LOCAL AGENCIES ARE COMPELLED TO PROVIDE FACILITIES FOR EDUCATION

Article IX, Section 5, of the California Constitution requires the Legislature to ". . . provide for a system of common schools by which a free school shall be kept up and supported in each district . . ." The Constitution makes public education a matter of statewide rather than local concern. (*Levi v. O'Connell* (2006) 144 Cal.App.4th 700, 706 fn.3.) The Legislature's power over the public school system is plenary, subject only to constitutional restraints. (*Wilson v. State Bd. Of Educ.* (1999) 75 Cal.App.4th 1125, 1134) "Where the Legislature delegates the local functioning of the school system to local boards, districts or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve." (*Id.* at p.1135 quoting *Phelps v. Prussia* (1943) 60 Cal.App.2d 732, 738)

School districts are determined by geographic boundaries, and must accommodate students within their boundaries as required by the free school guarantee. Children are required to attend school by Education Code Sections 48200 et al, which set the parameters of compulsory education. Therefore, children are compelled to attend school, school districts are compelled to enroll children and provide facilities for their instruction.

There are also specific statutory requirements for providing school facilities. Governing boards are legally required to build new school facilities when there is a vote by the district directing them to do so, as required by Education Code Section 17340. Section 17573 requires the governing board to provide a "warm, healthful place" for children to eat their lunches. Section 17576 requires that sufficient restrooms are provided. If a school facility is found to be unsafe, Education Code Sections 17367 and 81162 (pertaining to K-12 school districts and community college districts respectively) require that the governing board adopt a plan to repair, reconstruct, *or replace* the unsafe school building.

The DSA (34) relied on a statement in *People v. Oken* for the proposition that school district governing boards have wide discretion in constructing school facilities. However, this statement must be viewed in context of the facts of that case. It concerned a private citizen attempting to require a school district to build a school building on a specific piece of property. Therefore, despite the broad language used, the holding of the court was only that a private individual could not maintain an action to dictate where or when a school must be built. The court did not even consider whether school districts were required to supply sufficient school facilities. "... [A] decision is not authority for what is said in the opinion but only for the points actually involved and actually decided." (*Childers v. Childers* (1946) 74 Cal.App.2d 56, 61) Thus, this case is misplaced for the proposition that there is no legal compulsion on K-12 school districts to provide adequate school facilities.

Contrary to the conclusion of the DSA, school districts are also practically compelled to construct new school facilities when existing facilities become inadequate. The decision to build new school facilities is *not* analogous to the decision to exercise eminent domain in *City of Merced.* In that case, the court determined that the city's choice of eminent domain *as a method to obtain property* was discretionary. It did not consider the

city's determination that it needed to obtain property in the first place, only the discretionary action of choosing eminent domain as the preferred method. In *Kern High School District*, the focus of the court was on the fact that the underlying programs were voluntary and extracurricular. The district could simply stop participating and the only consequence would be the loss of related funding.

If the decision to build new school facilities is truly voluntary, then school districts or community college districts would have multiple ways of responding to the need, as in *City of Merced*, or may simply choose not to respond, as in *Kern*. If this were true, K-12 schools would be able to turn away students within their geographic boundaries once existing facilities had met their capacity. Therefore, K-12 school districts are legally and practically compelled to construct new facilities, replace existing facilities when needed, and repair and maintain current facilities. Accordingly school districts must comply with the mandates required by CEQA.[4]

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Michael Johnston
Assistant Superintendent
Business Services

[4] The aforementioned remarks may have also been included in claimant's March 31, 2004 comments.

Date: 11/12/2009
Claim Number: 03-TC-17
Issue: California Environmental Quality Act (CEQA)

AGENDA MAILING LIST

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Cheryl Miller Santa Monica Community College District 1900 Pico Blvd. Santa Monica, CA 90405-1628	Tel: Fax:	310-434-4221 310-434-4256
Mr. Scott Morgan Governor's Office of Planning and Research (A-08) P.O. Box 3044, Room 212 Sacramento, CA 95812-3044	Tel: Fax:	916-445-0613 916-323-3018
Mr. Kirk Miller Resources Agency 1416 9th Street, Suite 1311 Sacramento, CA 95814	Tel: Fax:	
Mr. Steve Bruckman California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	916-323-7007 916-322-4783
Mr. Patrick Day San Jose Unified School District 855 Lenzen Avenue San Jose, CA 95126-2736	Tel: Fax:	408-535-6572 408-535-6692
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capital Mall, Suite 518 Sacramento, CA 95814	Tel: Fax:	916-323-5849 916-327-0832
Mr. Jim Soland Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: Fax:	916-319-8310 916-324-4281
Mr. Mike Brown School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Santa Monica, CA 90405-1628	Tel: Fax:	916-669-5116 888-487-6441

Mr. Art Palkowitz San Diego Unified School District 4100 Normal Street, Room 2148 San Diego, CA 92103-2682	Tel: Fax:	619-725-5630 619-725-7569
Chris Bonvenuto Santa Monica Community College District 1900 Pico Blvd. Santa Monica, CA 90405-1628	Tel: Fax:	310-434-4201 310-434-8200
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: Fax:	916-446-7517 916-446-2011
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd, #307 Sacramento, CA 95842	Tel: Fax:	916-727-1350 916-727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: Fax:	951-303-3034 951-303-6607
Mr. Michael Johnston Clovis Unified School District 1450 Herndon Avenue Clovis, CA 93611-0599	Tel: Fax:	559-327-9127 559-327-9129
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: Fax:	916-454-7310 916-454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: Fax:	866-481-2621 866-481-2682
Mr. Erik Skinner California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: Fax:	916-323-7007 916-322-4783
Mr. David E. Scribner Max 8550 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: Fax:	916-852-8970 916-852-8978
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Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: Fax:	209-834-0556 209-834-0087
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: Fax:	916-324-0256 916-323-6527

Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: Fax:	916-445-0328 916-323-9530
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	916-445-3274 916-449-5252
Ms. Jolene Tollenaar MGT of America 2001 P Street, Suite 200 Sacramento, CA 95811	Tel: Fax:	916-443-9136 916-443-1766
Mr. Keith Petersen SixTen & Associates 3270 Arena Blvd., Suite 400-363 Sacramento, CA 95834	Tel: Fax:	916-419-7093 916-263-9701

CHARLES BOWNDS et al., Plaintiffs and Appellants
v.
CITY OF GLENDALE et al., Defendants and Respondents; STEVENSON-DILBECK DEVELOPMENT COMPANY, etc., et al., Real Parties in Interest and Respondents.
Civ. No. 58910.

Court of Appeal, Second District, Division 2, California.
Dec 23, 1980.

SUMMARY

A tenant in an apartment building which was approved by a city for conversion to condominium ownership brought proceedings in mandamus to compel the city council to vacate and set aside all approvals granted after a certain date for the conversion of existing apartment houses to condominium ownership and to declare a moratorium on such conversion pending certain actions by the city in the area of planning. The trial court entered judgment denying the petition for mandate. (Superior Court of Los Angeles County, No. C 248344, Charles H. Phillips, Judge.)

The Court of Appeal affirmed. With respect to petitioner's contention that the general plan adopted by the city was inadequate because the housing element of the plan did not discuss in specific terms the subject of condominium conversion and did not comport with the guidelines of the State Department of Housing and Community Development, the court held the decision-making power in the area of land use and planning rested with the local governmental agencies to be exercised within the constraints prescribed by enactments of the state Legislature. The court held that guidelines promulgated by the department were not self-executing and did not have the binding effect of law. The court also held that when any attack is made on the exercise of a local government's decision-making power and the adequacy of the general plan within which it is to be exercised a presumption of validity attaches to the actions of the governmental agency. The court held the subject of conversion of condominiums is of such importance that the authority of the local government to regulate in the area should not hinge on subjective interpretation by courts or administrative boards of the vague or general language to be found in the planning and land use law. The court noted that since the commencement of the action, the Legislature amended Gov. Code, § 65302, specifically providing that any guidelines or findings adopted by the department are advisory only, and that judicial review of a local plan is limited to a determination of whether there is "reasonable compliance" with the statutes. (Opinion by Compton, J., with Fleming, Acting P. J., and Beach, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Zoning and Planning § 5--Constitutional and Statutory Provisions--Land Use Plans.
The State Planning and Zoning Law (Gov. Code, § 65000 et seq.) requires that cities and counties adopt a general plan for the future development, configuration and character of the city and county, and require that future land use decisions be made in harmony with that general plan. Except for mandating the development of a plan, specifying the elements to be included therein, and imposing on the cities and counties the general requirement that land use decisions be guided by that plan, the Legislature has not preempted the decision-making power of local legislative bodies as to the specific contours of the general plan or actions taken thereunder. The thrust of the statutory scheme is to insure that decisions made by local governmental entities, which affect future growth of their communities, will be the result of considered judgment in which due consideration is given to the various interrelated elements of community life. The statutes make clear, however, that local control is at the heart of the process.
[See **Cal.Jur.3d**, Zoning and Other Land Controls, § 6; **Am.Jur. 2d**, Zoning and Planning, § 69.]
(2a, 2b, 2c) Zoning and Planning § 13--Content and Validity of Zoning Ordinances, Planning Enactments and Orders--Legislative Discretion and Judicial Re-

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view--General Plans.
In mandamus proceedings brought by a tenant in an apartment building which was approved by a city for conversion to condominium ownership, seeking to vacate all approvals granted after a certain date for condominium conversion and to declare a moratorium on such conversions on the ground the housing element of the city's general plan did not discuss in specific terms the subject of condominium conversions and did not comport with guidelines of the State Department of Housing and Community Development, the trial court properly denied relief, where the housing element of the city's master plan contained an extremely comprehensive analysis of the present housing inventory and future needs, and where the overall plan and its ordinances in the area of land use regulation represented an honest and reasonable effort to comply with the state's statutory requirements (State Planning and Zoning Law, Gov. Code, § 65000 et seq.). Moreover, the decision-making power in the area of land use and planning rests with the local governmental agencies to be exercised within the constraints prescribed by enactments of the state Legislature. When any attack is made on the exercise of that decision-making power and the adequacy of the general plan within which it is to be exercised, a presumption of validity attaches to the actions of the local governmental agency. Guidelines promulgated by the State Department of Housing and Community Development are not self-executing and do not have the binding effect of law.

(3) Zoning and Planning § 13--Content and Validity of Zoning Ordinances, Planning Enactments and Orders--Legislative Discretion and Judicial Review--Local Plans.
While a reviewing court may conclude that in form and general content a local plan fails to meet the general requirements of the State Planning and Zoning Law (Gov. Code, § 65000 et seq.), the court cannot and should not involve itself in a detailed analysis of whether the elements of the plan are adequate to achieve its purpose. To do so would involve the court in the writing of the plan. That issue is one for determination by the political process and not by the judicial process.

(4a, 4b) Constitutional Law § 68--Property and Occupation--Right to Sell, Acquire, and Hold Property--Condominium Conversion--Police Power.
In regulating condominium conversion or land use generally, the police power is in direct confrontation with Cal. Const., art. I, § 1, concerning the right to acquire or possess property, and Cal. Const., art. I, § 19, prohibiting the taking of private property without just compensation. In areas of such critical importance and sensitivity as impairing private property rights and mandating the expenditure of public funds, the delegation of legislative authority to an administrative agency would violate the doctrine of separation of powers in Cal. Const., art. III, § 3, and would be invalid. Accordingly, guidelines promulgated by the State Department of Housing and Community Development concerning land use and housing are not self-executing and do not have the binding effect of law. The subject of conversion of condominiums is of such importance to property owners and tenants alike that the authority of the local government to regulate in the area should not hinge on subjective interpretation by courts or administrative boards of vague or general language to be found in the planning and land use law (Gov. Code, § 65000 et seq.)

COUNSEL

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COMPTON, J.

Proceedings in mandamus to compel the City Council of the City of Glendale (City), inter alia, to vacate and set aside all approvals granted subsequent to July 20, 1978, for the conversion of existing apartment houses to condominium ownership and to declare a moratorium on such conversions pending certain actions by the City in the area of planning which, according to petitioner, are required by law.***879** The State Department of Housing and Community Development (Department) and the Sierra Club have filed amicus curiae briefs in support of petitioner. An amicus brief in support of City and real parties in interest has been filed on behalf of the City of Irvine and 45 other California cities.

Petitioner is a tenant in an apartment building which was approved by City on July 20, 1978, for conversion to condominium ownership. In this action he purports to represent an unincorporated association of tenants who are similarly situated.

The real parties in interest are owners of apartment buildings who, subsequent to July 20, 1978, have applied for and received approval for conversion to condominiums. The trial court entered judgment denying the petition for mandate. Petitioner has appealed. We affirm.

Code of Civil Procedure section 1085 provides that a writ of mandate may be issued to compel a public official to perform an act which the law specifically requires him to perform. Petitioner contends that City is required by law and should be mandated to perfect what he describes as an "inadequate" general plan and that the failure to take such action renders the City powerless to approve condominium conversions. Hence, according to petitioner, such previously granted approvals must be vacated.

While the immediate goal of petitioner is to prevent the accomplishment of a number of specific condominium conversion projects, the fundamental issue involved is the decision-making power in the area of land use and planning.

Land use regulation in California has historically been a function of local government under the grant of police power contained in California Constitution, article XI, section 7. [FN1] The exercise of that power has traditionally been accomplished through zoning ordinances and regulation of subdivisions under the Subdivision Map Act (formerly Bus. & Prof. Code, § 11500 et seq., now Gov. Code, §§ 66410 through 66499.30).***880**

> FN1 California Constitution, article XI, section 7 provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

(1)In recent years the Legislature has enacted a number of statutes as part of the State Planning and Zoning Law, (Gov. Code, § 65000 et seq.) the combined effect of which is to require that cities and counties adopt a general plan for the future development, configuration and character of the city or county and require that future land use decisions be made in harmony with that general plan.

The general plan is required to contain elements dealing with specific areas such as housing, land use and circulation. (Gov. Code, § 65302.)Subdivision map approval and zoning decisions must be consistent with the general plan. (Gov. Code, §§ 66473.5, 66479 and 65860.)

The Department is authorized to develop and publish guidelines for the preparation of the housing element of the plan (Gov. Code, § 65040.2; Health & Saf. Code, § 50459) and the Office of Planning and Research is authorized to do the same for other elements of the plan (Gov. Code, § 65040.2). The Department's guidelines were promulgated in 1973 and codified in California Administrative Code, title 25, sections 6300 through 6350.

Except for mandating the development of a plan, specifying the elements to be included in the plan, and imposing on the cities and counties the general re-

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quirement that land use decisions be guided by that plan, the Legislature has not preempted the decision making power of local legislative bodies as to the specific contours of the general plan or actions taken thereunder.

As we will discuss, petitioner's contentions in this case, as supported by amicus curiae, if accepted, would result in that decision making power being usurped by the Department or the courts.

These contentions are that the guidelines promulgated by the Department are binding on local governments and have the force of law and that the courts should assume the role of determining the "adequacy" with which a local plan addresses all of the various societal factors.

The thrust of the statutory scheme embodied in the state planning and zoning law is to insure that decisions made by local governmental entities, which affect future growth of their communities, will be the result of considered judgment in which due consideration is given to the various interrelated elements of community life. The statutes make clear, however, that local control is at the heart of process. ***881**

Government Code section 65030.1 provides in part: "The Legislature also finds that decisions involving the future growth of the state, *most of which are made and will continue to be made at the local level*, should be *guided* by an effective planning process, including the local general plan, and should proceed within the *framework* of officially approved statewide goals and policies...to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors." (Italics added.)

Government Code section 66411 provides in part: "Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. *Each local agency shall by ordinance, regulate and control subdivisions for which this division requires a tentative and final or parcel map....*" (Italics added.)

The general plan which a city or county is required to adopt is simply a statement of policy. A general plan or policy, whether it be adopted by governmental entity or private organization serves to provide a standing consistent answer to recurring questions and to act as a guide for specific plans or programs. (*O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774 [42 Cal.Rptr. 283].)

Here the City has adopted a master plan and the housing element, which became mandatory by virtue of an amendment to Government Code section 65302, subdivision (c), effective January 1, 1972, was completed by mid-1975. That element was undergoing study and revision commencing in early 1978 and a revision was adopted August 1, 1978. The instant action was not commenced until August 21, 1978.

Since 1954, City has also had an ordinance regulating the design and construction of all phases of subdivision development. In December of 1978, it adopted a specific ordinance dealing with condominium development which is applicable to both new development and conversions.

(2a)Petitioner's contention is that the City ordinance regulating condominium conversion is invalid and that any approval of such conversions pursuant thereto is void because the housing element of the *general plan* is "inadequate." The argument goes that any subdivision regulation, including regulation of condominium conversion, cannot be consistent with the general plan as required by ***882**Government Code tions 66473.5 [FN2] and 66474, [FN3] if the general plan itself is defective or inadequate.

FN2 Government Code section 66473.5 reads as follows: "No local agency shall approve a map unless the legislative body shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of this title, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of this title. ¶ A proposed subdivision shall be consistent with a general plan or a specific plan only if

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the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses and programs specified in such a plan."

FN3 Government Code section 66474 reads in part as follows: "A legislative body of a city or county shall deny approval of a final or tentative map if it makes any of the following findings: (a) That the proposed map is not consistent with applicable general and specific plans. (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans."

Both petitioner and amicus rely heavily on *Save El Toro Assn. v. Days* (1977) 74 Cal.App.3d 64 [141 Cal.Rptr. 282]. In that case the Court of Appeal invalidated a city's approval of a subdivision map because the court determined that the city had adopted neither a general plan nor a local open space plan. It was there held that a subdivision could not be consistent with a nonexistent plan.

Here, there is no question but what the City of Glendale has adopted a general plan with all of the required elements. The claim is simply that, according to petitioner, it is "inadequate" because the housing element of the plan does not discuss in specific terms the subject of condominium conversion and that it does not comport with the Department's guidelines, which, in our opinion, are nothing more than the Department's interpretation of the Legislature's desires. We think it important to note that with one exception neither the statutes themselves nor the guidelines make any specific mention of condominium conversion.

While condominiums, since their recent advent in California, have been treated as subdivisions of airspace and thus subject to the same general type of regulation as traditional land subdivision, it is apparent that conversion of an existing apartment building to condominium ownership does not involve the land use considerations inherent in the traditional land subdivision.

In obvious recognition of this distinction the Legislature has exempted condominium conversions from certain requirements applicable to ***883** other types of subdivisions. Government Code section 66427.2 provides that condominium conversions, which do not include the addition of new units, are *not* required to be consonant with the general plan unless that plan contains "definite objectives and policies" relating thereto.

Government Code section 66427, a part of the Subdivision Map Act, exempts condominium projects from a requirement of providing detailed maps of the building being subdivided.

Petitioner and the Department concede that an otherwise adequate general plan need not contain any reference to condominium conversions because such silence implies a finding that conversions pose no obstacle to implementation of the general plan and to require such reference and the procedure that would flow therefrom would be simply a bureaucratic exercise.

What then is the basis for the claim that the City's plan is not otherwise adequate? In short, it is that the City's plan fails to comport with the Department's guidelines which it interprets as requiring an exhaustive inventory of available housing and an "action" program to insure adequate housing for all economic segments of the community, and which in light of the housing situation in Glendale, must necessarily include reference to the subject of condominium conversions.

The trial court found, on the basis of evidence presented, that the plan, and more specifically the housing element, was adequate and that no special conditions existed which would make it mandatory for the City to include specific provisions concerning condominium conversions. The trial court also found that in each case the approval of the specific conversion project was consistent with the general plan.

The actions of the City are presumed to be valid and a regular performance of official duty. The burden is on petitioner to demonstrate that the City has failed to perform a specific duty mandated by law.

Planning is at best an inexact science. General plans or

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policy statements are often semantical exercises which require considerable interpretation on the part of persons charged with implementing them.

In the area of planning and land use the Legislature has promulgated its own general policies and mandated that local governments in turn adopt plans which comport with the Legislature's policies. ***884**

Absent a complete failure or at least substantial failure on the part of a local governmental agency to adopt a plan which approximates the Legislature's expressed desires, the courts are ill-equipped to determine whether the language used in a local plan is "adequate" to achieve the broad general goals of the Legislature. (3)In short, while a court, such as in *Save El Toro Assn. v. Days, supra.*, 74 Cal.App.3d 64, may conclude that in form and general content, a local plan fails to meet the general requirements of the statute, a court cannot and should not involve itself in a detailed analysis of whether the elements of the plan are adequate to achieve its purpose. To do so would involve the court in the writing of the plan. That issue is one for determination by the political process and not by the judicial process.

A perfect example of the problem is presented in this case. Government Code section 65302, subdivision (c) states in part that the housing element should contain "...standards and plans for the improvement of housing and for provision of adequate sites for housing. This element of the plan shall make adequate provision for the housing needs of all economic segments of the community. Such element shall consider all aspects of current housing technology, to include provisions for not only site-built housing, but also manufactured housing, including mobile-homes and modular homes."

Petitioner and the Department interpret that language as requiring the cities and counties to affirmatively plan in terms of "who, what and when" for the *creation* of housing. Implicit in this is the requirement of the expenditure of public funds for the purpose. The City contends there is no legislative mandate to affirmatively acquire or produce housing.

In the absence of more specific legislation, it would ill-behoove any court to indirectly mandate such a specific "action" program under the guise of declaring an otherwise complete and comprehensive plan to be inadequate, basing its decision on nothing more than a subjective interpretation of such nonspecific language.

(2b)Contrary to the contention of petitioner, we conclude that the housing element of the City's master plan contains an extremely comprehensive analysis of the present housing inventory and future needs. The City's overall plan and its ordinances in the area of land use regulation represent an honest and reasonable effort to comply with the state's statutory requirements. ***885**

Finally, we turn to the contention that the guidelines promulgated by the department have the effect of law, are binding on the cities and counties and thereby limit the legislative prerogative of the city councils and boards of supervisors.

In our opinion, this is a startling concept indeed. As noted earlier, planning guidelines are developed by two bodies under two separate statutory authorizations. Government Code section 65040.2 specifically provides that the guidelines promulgated by the Office of Planning and Research are advisory only.

Health and Safety Code section 50459, which provides for the authority of the Department to promulgate guidelines concerning the housing element in local planning, does not, however, specifically declare such guidelines to be advisory only. The statute does, however, authorize that department to review local housing elements for conformity with Government Code section 65302 and *report its findings*. The clear implication is that the Department has no authority on its own to compel compliance according to its own notion of what constitutes compliance. The term "guidelines" itself suggests an absence of compulsion.

To carry the argument to its logical extreme, if the Department could promulgate regulations or guidelines having the effect of law it could simply adopt a regulation banning all condominium conversions or spelling out the Department's own regulatory scheme. Further, the Department could, according to its interpretation of the statute, require public funding for housing developments.

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(4a)In regulating condominium conversion or, in fact, in regulating land use generally, the police power is in direct confrontation with article I, section 1 of the California Constitution (right to acquire or possess property) and article I, section 19 (prohibition against the taking of private property without just compensation). In areas of such critical importance and sensitivity as impairing private property rights and mandating the expenditure of public funds, a delegation of legislative authority to an administrative agency would violate the doctrine of separation of powers, article III, section 3 and would be invalid.

(2c)In summary, the decision making power in the area of land use and planning still rests with the local governmental agencies to be exercised within the constraints prescribed by enactments of the state *886 Legislature. When any attack is made upon the exercise of that decision making power and the adequacy of the general plan within which it is to be exercised, a presumption of validity attaches to the actions of the local governmental agency.

(4b)Guidelines promulgated by the Department are not self-executing and do not have the binding effect of law. The subject of conversion of condominiums is of such importance to property owners and tenants alike that the authority of the local government to regulate in the area should not hinge upon subjective interpretation by courts or administrative boards of the vague or general language to be found in the planning and land use law. If the Legislature desires to preempt the decision making power of local governments in the field, it should specifically say so.

Our conclusion is borne out by the fact that since the commencement of this action, the Legislature has enacted Assem. Bill No. 2853, which amends Government Code section 65302 and adds article 10.6 to chapter 3 of division 1 of title 7 of the Government Code.

The effect of this legislation is to codify many of the provisions of the Department's former guidelines, and to require compliance by October 1, 1981. The new enactment specifically provides that any guidelines or findings adopted by the Department are advisory only, and that judicial review of a local plan be limited to a determination of whether there is "reasonable compliance" with the statutes.

This indicates to us a recognition by the Legislature that the Department's guidelines have always been advisory only, that any such drastic impairment of the legislative prerogative of local government should be undertaken only by specific legislative action and judicial review for compliance be limited in scope.

The judgment is affirmed.

Fleming, Acting P. J., and Beach, J., concurred.
Petitions for a rehearing were denied January 9, 1981, and appellant's petition for a hearing by the Supreme Court was denied March 11, 1981. *887

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113 Cal.App.3d 875, 170 Cal.Rptr. 342

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CANDID ENTERPRISES, INC., Plaintiff and Respondent,
v.
GROSSMONT UNION HIGH SCHOOL DISTRICT et al., Defendants and Appellants
L.A. No. 31877.

Supreme Court of California
Sep 26, 1985.

SUMMARY

The trial court granted a condominium developer's petition for a writ of mandate ordering a school district to refund fees for construction of additional school facilities, imposed as a condition of granting building permits, and prohibiting the district from collection of further fees. (Superior Court of San Diego County, No. 474776, Joseph A. Kilgarif, Judge.)

The Supreme Court reversed, holding that the School Facilities Act (Gov. Code, § 65970 et seq.), which encourages local school boards to identify and local governments to deal with the problem of overcrowding, and to that end permits the imposition of school-impact fees to finance certain temporary facilities, did not preempt local governments from imposing such fees to finance both temporary and permanent facilities. The court held the school-impact fees did not contradict or duplicate the provisions of the act, and that such fees have not entered an area fully occupied by state law. It further held that, because the act both permitted and recognized local measures, such as the school-impact fees, it did not have implied preemptive effect. The court further held the imposition of the fees did not violate equal protection. (Opinion by Mosk, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Mandamus and Prohibition § 6--Mandamus--Conditions Affecting Issuance-- Acts and Duties Enforceable--Legislation.
The writ of mandate may be used to challenge the validity of a legislative measure.

(2a, 2b, 2c, 2d) Schools § 4--School Districts; Financing; Funds-- School-impact Fees Imposed on Developers--State Preemption.
The imposition by a local government of otherwise valid fees on real property development ("school-impact fees") to cover the cost of constructing and maintaining school facilities attributable to such development, was not preempted by the School Facilities Act (Gov. Code, § 65970 et seq.), where the school-impact fees did not contradict or duplicate the provisions of the act, and where the fees did not enter an area fully occupied by state law. The act does not even purport to deal with the construction of permanent facilities, and does not fully and completely cover the construction of temporary facilities. Moreover, the act recognizes alternative, local financing arrangements.
[See **Cal.Jur.3d**, Municipalities, § 200; **Am.Jur.2d**, Municipal Corporations, Counties, and Other Political Subdivisions, § 375.]
(3) Municipalities § 26--Powers--Police Power--Scope.
Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the police power of a county or city is as broad as the police power exercised by the Legislature itself.

(4) Municipalities § 55--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or Charter.
If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by the general law, either expressly or by legislative implication.

(5) Municipalities § 56--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or

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Charter--Test for Preemption.
In determining whether the Legislature has preempted by implication to the exclusion of local regulation, courts must look to the whole purpose and scope of the legislative scheme. There are three tests: the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become explicitly a matter of state concern; the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

(6) Municipalities § 55--Ordinances, Bylaws and Resolutions--Validity-- Conflict With Statutes or Charter--Preemption by Implication.
Preemption of local laws by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations.

(7) Schools § 4--School Districts; Financing; Funds--Fees Imposed on Developers--Validity.
The imposition by the local government of otherwise valid fees on real property development to cover the cost of constructing and maintaining school facilities attributable to such development did not violate equal protection. As an instance of economic regulation, the fees were presumptively constitutional and were validated by their rational relationship to a legitimate public purpose.

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MOSK, J.

The major question we must decide in this case concerns what are commonly referred to as "school-impact fees" - i.e., fees that local ***881** governments impose on real property development to cover the costs of constructing and maintaining school facilities attributable to such development. The precise question is whether the School Facilities Act (sometimes hereafter the Act) (Gov. Code, § 65970 et seq.) [FN1] - which encourages local school boards to identify and local governments to deal with the problem of overcrowding, and to that end permits the imposition of school-impact fees to finance certain temporary facilities - preempts local governments from imposing such fees to finance both temporary and permanent facilities. We answer this question in the negative, and therefore reverse the judgment.

FN1 Unless otherwise noted, all statutory references are to the Government Code.

I

In California the financing of public school facilities has traditionally been the responsibility of local government. "Before the *Serrano* v. *Priest* decision in 1971, school districts supported their activities mainly by levying ad valorem taxes on real property within their districts." (Cal. Building Industry Assn., Financing School Facilities (Apr. 1983) p. 3 (hereafter Financing School Facilities).) Specifically, although school districts had received some state assistance since 1947, and especially since 1952 with the enactment of the State School Building Aid Law of

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1952 (Ed. Code, § 16000 et seq.), they financed the construction and maintenance of school facilities mainly through the issuance of local bonds repaid from real property taxes.

After the *Serrano* decision (5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]) and to the present day, local government has remained primarily responsible for school facility financing, but has often been thrust into circumstances in which it has been able to discharge its responsibility, if at all, only with the greatest difficulty. In these years, the burden on different localities has been different: extremely heavy on those that have experienced growth in enrollment, light on those that have experienced decline, and somewhere in between on those that have remained stable.

In the early 1970's, because of resistance to increasing real property taxes, localities throughout the state began to experience greater difficulty in obtaining voter approval of bond issues to finance school facility construction and maintenance. As a result, a number of communities chose to impose on developers school-impact fees - such as those at issue here - in order to make new development cover the costs of school facilities attributable to ***882** it. (See, e.g., *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court* (1974) 13 Cal.3d 225 [118 Cal.Rptr. 158, 529 P.2d 582].)

With the passage of Proposition 13 in 1978 the burden of school financing became even heavier. "Proposition 13 prohibits ad valorem property taxes in excess of 1%, except to finance previously authorized indebtedness. Since most localities have reached this 1% limit, school districts cannot raise property taxes even if two-thirds of a district's voters wanted to finance school construction." (Financing School Facilities, *supra*, at p. 4; see Ed. Code, § 17786 ["the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities"].) Moreover, although Proposition 13 authorizes the imposition of "special taxes" by a vote of two-thirds of the electorate, such special taxes have rarely been imposed, remain novel, and as consequence are evidently not perceived as a practical method of school facility financing - especially in view of the need for a two-thirds vote of the electorate to approve them. (Financing School Facilities, *supra*, at pp. 4, 14.)

In the face of such difficulties besetting local governments, the state has not taken over any substantial part of the responsibility of financing school facilities, less still full responsibility. To be sure, in order to implement the *Serrano* decision the Legislature has significantly increased assistance to education. But it has channeled by far the greater part of such assistance into educational programs and the lesser part into school facilities; in fiscal year 1981-1982, for example, only 3.6 percent went for such facilities. (Financing School Facilities, *supra*, at pp. 3, 4, 6.) The Legislature has developed "no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts," but rather has enacted merely "a series of stop-gap, patchwork measures." (*Id.* at p. 6.) Moreover, because of, among other things, the state budget crisis in the early 1980's and other factors the Legislature has not adequately funded such measures as it has enacted - indeed, "[i]n the past several years, state-supported construction finance has waned ...." (*Id.* at pp. 6, 16.) Thus, although the burden of financing school facilities appears too heavy for some localities to bear, they continue to bear it in large part alone.

II

In 1974 the Board of Supervisors of San Diego County adopted in the form relevant here a land-use policy, designated Policy I-43 (sometimes hereafter the Policy), to help assure orderly growth in the face of widespread and rapid development and a consequent general increase in population. In the Policy, the board of supervisors described the basic problem: ***883** "In many cases, ... the required public services have not ... been installed by the time the development shows a need. The result has been that residents in the newly developed areas have been inadequately served with schools." It then went on to frame a solution: "Before giving approval to development proposals involving a special use permit or a rezoning, ... the proponent of the development proposal ... [must] make certain provisions, in conjunction with appropriate governmental agencies, to insure: [¶] That the proponent of the development present evidence satisfactory to the Planning Commission, at the time of its consideration

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of the matter, and to the Board of Supervisors at the time of its consideration of the matter that public school services will in fact be provided concurrent with the need." As evidence that such services and facilities would be provided, the county accepted so-called "school-availability" letters from the local school districts.

In 1977 respondents Grossmont Union High School District (the District) and its governing board (the Board) recognized that developments being proposed at that time might cause overcrowding, and sent letters to that effect to the county. On the basis of such letters, the planning commission concluded that the District could not in fact provide adequate school facilities concurrent with the need created by the proposed developments, and accordingly permitted few if any such developments to proceed.

In the fall of 1977 the predecessor of petitioner Candid Enterprises, Inc. expressed its willingness to enter into an agreement with the District to permit its development to proceed: it would agree to pay fees for school facilities and the District would issue a school-availability letter to the county indicating that such facilities would be provided. [FN2] The District approved the agreement in principle and, in order to facilitate it and others like it, adopted Revised Policy FF, which allowed for assessment, under Policy I-43, of school-impact fees from developers, to be used for temporary or permanent facilities. In the spring of 1978 the District entered into an agreement with petitioner's predecessor secured by the real property under development. By its terms the developer agreed to pay the established fees at the time it sought building permits, and the District issued a school-availability letter advising the county of the agreement and of its ability to provide adequate school facilities through use of the fees.

FN2 The president of petitioner and its predecessor is one and the same person.

Meanwhile, the School Facilities Act had become effective on January 1, 1978. Under the Act, cities and counties were authorized to enact ordinances to require developers to pay fees for temporary school facilities. ***884** (§ 65974.) In the spring of 1978 the board of supervisors enacted such an ordinance, designated Ordinance 5120. Shortly thereafter, in order to facilitate agreements with developers for the payment of fees for temporary facilities under the Act, the District adopted a resolution finding that conditions of overcrowding existed and that it lacked financial resources to provide additional needed school facilities.

In 1978 and 1979 the District assessed some developers for fees for temporary facilities pursuant to the School Facilities Act and Ordinance 5120; with others it entered into secured agreements for the payment of fees for temporary or permanent facilities, in lieu of School Facilities Act fees, pursuant to Policy I-43 and Revised Policy FF. Because of a districtwide decline in enrollment, in February 1980 the District discontinued collecting School Facilities Act fees. At the same time it also discontinued entering into Policy I-43 secured agreements, although it stated its intent to continue to monitor proposed developments, enter into such agreements when necessary, and collect fees under existing agreements in order to provide adequate facilities concurrent with the need that the subject developments were expected to create.

Petitioner, which had purchased a three-lot condominium project from its predecessor, sought building permits late in 1980. In early 1981 it paid under protest $23,500 in Policy I-43 school-impact fees pursuant to the secured agreement between the District and its predecessor. Petitioner then unsuccessfully sought a refund by a letter to the District. Next it requested to speak to the Board on the matter, and was granted permission. At the meeting petitioner asked that in view of declining districtwide enrollment, the Board refund the fees paid under protest and cancel its secured agreement and all other similar agreements. The Board found that the District (1) discontinued collecting School Facilities Act fees and entering into Policy I-43 secured agreements "since it was projected that funds committed under existing agreements would be sufficient to mitigate future impact[,]" (2) "reserved the right to require the commitment of fees from future developments which promised to upset this condition of balance[,]" and (3) never had "any intention to disregard existing agreements, since the housing from projects covered by those agreements will adversely impact the District at their time of completion." The Board then denied petitioner's request.

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Petitioner initiated this proceeding for a writ of mandate pursuant to Code of Civil Procedure sections 1094.5 (administrative mandate) and 1084 (ordinary mandate). Respondents filed a demurrer and an answer. After a hearing the trial court overruled the demurrer and ordered that mandate issue. ***885** From the ensuing judgment respondents appeal, arguing the substantive point that the imposition of Policy I-43 school-impact fees was not invalid on either preemption or equal protection grounds. (1)**(See fn. 3.)** As we explain below, we find their position meritorious. [FN3]

FN3 Respondents also press the procedural point that their demurrer should have been sustained. This argument, however, is untenable. Although the writ of administrative mandate does not lie because the Board was not required by law to grant petitioner a hearing on its request (Code Civ. Proc., § 1094.5, subd. (a); *Court House Plaza Co. v. City of Palo Alto* (1981) 117 Cal.App.3d 871, 880 [173 Cal.Rptr. 161]), the writ of ordinary mandate is available. Mandate requires that there be no "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) There was no such remedy here: an action on the contract for refund of fees paid and release from payment of the remainder was inadequate because there were no grounds on which to allege a breach or to seek rescission; no statutory action for a refund then existed, although one now does (§ 65913.5, subd. (e)); and an action for declaratory relief was inappropriate insofar as petitioner was attacking the local legislation as applied (*Mobil Oil Corp. v. Superior Court* (1976) 59 Cal.App.3d 293, 307 [130 Cal.Rptr. 814]). The writ of mandate may of course be used, as it is used here, to challenge the validity of a legislative measure. (E.g., *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2 [96 Cal.Rptr. 697, 488 P.2d 1].)

III

(2a) Respondents first contend that the imposition of Policy I-43 school-impact fees is not preempted by the School Facilities Act and is accordingly valid. Petitioner concedes as it must that the imposition of school-impact fees is generally valid. (See *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court, supra*, 13 Cal.3d 225, 232, fn. 6.) Respondents proceed to argue successfully that the local legislation is not preempted by the Act on the ground that there is no conflict.

(3) Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, § 7.) Apart from this limitation, the "police power [of a county or city] under this provision ... is as broad as the police power exercisable by the Legislature itself." (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140 [130 Cal.Rptr. 465, 550 P.2d 1001].)

(4) If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. (*People* ex rel. *Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484 [204 Cal.Rptr. 897, 683 P.2d 1150]; *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807 [100 Cal.Rptr. 609, 494 P.2d 681].) A conflict exists if the local legislation "'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'" (Citations omitted.) (*People* ex rel. *Deukmejian v. County of Mendocino, supra*, 36 Cal.3d at p. 484.) ***886**

(2b) Respondents argue and petitioner concedes that Policy I-43 school-impact fees do not contradict or duplicate the provisions of the School Facilities Act. Respondents further assert that such fees have not entered an area fully occupied by state law. They are persuasive.

First, the area of financing of school facilities needed by new development has not been expressly occupied by state law. The Legislature has not voiced such an intent in any of its enactments, and petitioner admits as much.

Second, the area has not been impliedly occupied by state law. (5) "In determining whether the Legislature has preempted by implication to the exclusion of local

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regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.'" (*People* ex rel. *Deukmejian v. County of Mendocino, supra*, 36 Cal.3d 476, 485, quoting from *In re Hubbard* (1964) 62 Cal.2d 119, 128 [41 Cal.Rptr. 393, 396 P.2d 809]; accord, *Fisher* v. *City of Berkeley* (1984) 37 Cal.3d 644, 708 [209 Cal.Rptr. 682, 693 P.2d 261] and cases cited.)

(2c) Petitioner concedes, as it must, that the imposition of Policy I-43 school-impact fees does not satisfy the third test, and respondents successfully urge that it satisfies neither of the other two. [FN4]

> FN4 How the relevant field occupied by the allegedly preemptive state legislation is defined is often crucial to the result: "If the definition is narrow, preemption is circumscribed; if it is broad, the sweep of preemption is expanded." (*California Water & Telephone Co.* v. *County of Los Angeles* (1967) 253 Cal.App.2d 16, 27-28 [61 Cal.Rptr. 618]; see *Gregory v. City of San Juan Capistrano* (1983) 142 Cal.App.3d 72, 84 [191 Cal.Rptr. 47].) The issue of definition, however, is not crucial here. Whether the School Facilities Act is held to occupy the narrow field of the financing of temporary facilities (as it evidently should be) or the broad field of the financing of all facilities (as it evidently should not be) is of no consequence in the case before us. As we shall explain, the Act recognizes and in fact permits local action, and thereby fails to occupy either field to the exclusion of local legislation.

First, the subject matter of the local measure - the financing of the construction of both temporary and permanent school facilities to meet the demands imposed by new development - has not been so fully and completely ***887** covered by general law as to clearly indicate that it has become exclusively a matter of state concern.

Taken by itself, the School Facilities Act does not even purport to deal with the construction of permanent facilities (see §§ 65970, subd. (e), 65974), and does not fully and completely cover the construction of temporary facilities. The Act recognizes alternative, local financing arrangements: "One year after receipt of any apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter *or pursuant to any other school facilities financing arrangement such district may have with builders of residential development*, to levy any fee or to require the dedication of any land within the attendance area of the district." (§ 65979, italics added.) The Act, moreover, clearly permits such arrangements. The school district is required to notify the local legislative body if it finds that "(a) conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for such conditions existing; and (b) that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exist [*sic*] ...." (§ 65971.) The Act goes on to define "reasonable methods for mitigating conditions of overcrowding": they "shall include, *but are not limited to*, agreements between a subdivider and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used." (§ 65973, subd. (b), italics added.)

Even if we consider the School Facilities Act together with other related state legislation, we come to the same conclusion: the subject matter of this local measure has not been fully and completely covered by state law. Although, as petitioner correctly argues, there are several state and local programs that provide funding for the construction of school facilities, [FN5] the general situation may properly be described in the

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words already quoted of one of petitioner's principal authorities: "Since the passage of Proposition 13, financing for school construction and facility maintenance has been a series of stop-gap, patchwork measures. There still exists no long-term, comprehensive solution to the acute and chronic facilities financing needs of local school districts." (Financing School Facilities, *supra*, at p. 6.) *888

FN5 These include, for example, the School Facilities Act, the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (hereinafter the Greene Act) (Ed. Code, § 17700 et seq.), the Mello-Roos Community Facilities Act of 1982 (§ 53311 et seq.), and the New Schools Relief Act of 1979 (Ed. Code, § 39050 et seq.).

The evident absence of implied preemptive intent in the terms of the School Facilities Act - whether we consider it by itself or with other related legislation - is confirmed by the failure of the Legislature to fully cover the financing of school facilities. First, not all school districts in need of funds for permanent facilities can qualify to receive them under the Greene Act. (See Ed. Code, § 17740.) Second, for a variety of reasons the Legislature has failed to provide adequate funding for even such "stop-gap, patchwork" programs as currently exist. In such circumstances, to construe alternative, local arrangements such as that before us to be preempted would severely impede local governments and school districts in carrying out their responsibilities. It would also frustrate the intent of the Legislature in enacting the School Facilities Act: "Adequate school facilities should be available for children residing in new residential developments." (§ 65970, subd. (a).) Thus, under this test - i.e., whether the subject matter of the local measure has been so fully covered by state law as to clearly indicate that it has become exclusively a matter of state concern - the Act is shown not to be preemptive. FN6

FN6 We do not mean to imply that the Legislature may not occupy a field unless it appropriates the funds necessary to carry out its intent. We also note that in some cases the "inadequacy" of state funding may prove to be too speculative or subjective a criterion on which to base a conclusion that the Legislature has not intended to preempt local action.

Second, the subject matter of this local measure has not been partially covered by state law couched in such terms as to indicate clearly that a paramount state concern will not tolerate additional local action. The evidence on which we base our conclusion is compelling: the School Facilities Act, as we have explained, unmistakably recognizes and permits local action. Thus, under this test too the Act is shown not to be preemptive.

(6) To summarize: "Preemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found when the statutory scheme recognizes local regulations." (*People* ex rel. *Deukmejian v. County of Mendocino, supra*, 36 Cal.3d 476, 485.) (2d) Accordingly, we conclude that the School Facilities Act, because it both permits and recognizes local measures such as this, does not have implied preemptive effect.

To avoid this conclusion, petitioner relies heavily on an opinion by the Attorney General. (62 Ops.Cal.Atty.Gen. 601 (1979).) Among the questions addressed in the opinion is whether the School Facilities Act preempts the imposition of school-impact fees by local government to provide permanent facilities. (*Id.* at p. 601.) To this the Attorney General answered *889 yes. (*Id.* at pp. 605-609.) The conclusion is erroneous, however, because the analysis is faulty.

First, the opinion reasons that the Act restricts the fees that may be imposed to no more than "'the amount necessary to pay five annual lease payments for the interim facilities,'" and that such a restriction "would be meaningless if a city council or board of supervisors could exact additional developer fees for permanent school facilities." (*Id.* at p. 607, quoting § 65974, subd. (d).) This position might be sound if the Act were intended to limit the authority of local government to make such exactions, but it is not. The purpose of the Act is to encourage local school districts to identify, and local governments to deal with, the effects of residential development on school facilities and to provide local government with "new and improved methods" to cope with the effects of such

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development "within a reasonable period of time" and on a short-term basis. (See §§ 65970-65971.) Accordingly, the restriction on the amount of fees that may be imposed is properly to be construed as an attempt on the part of the Legislature to ensure that local governments not indefinitely avoid the problem of the construction of permanent facilities by agreeing to the long-term use of temporary facilities.

Second, the opinion reasons that the 1979 addition of section 65980, which expressly limits the scope of the Act to temporary facilities, when as initially enacted it "was arguably broad enough to cover permanent facilities [as well,] ... indicated an intent to restrict the amount and purpose of the fees to be collected from developers." (62 Ops.Cal.Atty.Gen., *supra*, at p. 607.) This position is undermined, however, by the conclusions we reach above: the Legislature evidently intended that local governments use fees authorized by the Act as a short-term solution - *not* that local governments be prohibited from developing and implementing long-term solutions. It is also undermined by the language of section 65979, which was added to the Act at the same time as section 65980: "One year after receipt of an apportionment pursuant to the [Greene Act] ... for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter *or pursuant to any other school facilities financing arrangement such district may have with builders of residential development*, to levy any fee or to require the dedication of any land within the attendance area of the district." (Italics added.) Thus, section 65979 expressly recognizes "other school facilities financing arrangement[s]" between local government and developers, and prohibits exactions pursuant to such arrangements *only* when the locality has received an apportionment for permanent facilities pursuant to the Greene Act. Had the Legislature intended the School ***890** Facilities Act to preempt such "school facilities financing arrangement[s]," the reference to them would have been meaningless.

Third, the opinion reasons by analogy to the Subdivision Map Act that "the express grant of authority to impose school impact fees and dedications upon developers under [the Act], with strict limitations as to amount, evidences an intent by the Legislature to preempt the field to the exclusion of local regulation." (62 Ops.Cal.Atty.Gen., *supra*, at p. 608.) But even if the opinion is correct in concluding that the intent of the Legislature in the Subdivision Map Act is to prohibit local government from making exactions that the Act does not expressly authorize, it errs in reading such an intent into the School Facilities Act. Here the Legislature recognizes (§ 65979) and in fact permits (§§ 65971, 65973, subd. (b)) local legislation, and has accordingly indicated its clear intent that the "new and improved methods of financing for interim school facilities" that the Act provides are merely supplementary to, and not preemptive of, local action (§ 65970, subd. (e)).

IV

(7) Respondents' other contention is that the imposition of Policy I-43 school-impact fees does not violate the equal protection clause and is accordingly valid. This claim too is successful.

The imposition of school-impact fees is an undisputed and indisputable instance of economic regulation. As such, we must review it under "the basic and conventional standard," which "invests legislation ... with a presumption of constitutionality and 'requir[es] merely that distinctions drawn by a challenged [measure] bear some rational relationship to a conceivable legitimate state purpose.'" (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 16 [112 Cal.Rptr. 786, 520 P.2d 10]; see *Builders Assn. of Santa Clara-Santa Cruz Counties v. Superior Court, supra*, 13 Cal.3d 225, 232-233.) As petitioner implicitly concedes, we may not review the challenged local measure under any stricter standard: developers do not constitute a "suspect class," and development is not a "fundamental interest" (see *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 328 [170 Cal.Rptr. 685]). Under the conventional standard, "the burden of demonstrating the invalidity of a classification ... rests squarely upon *the party who assails it*." (*D'Amico v. Board of Medical Examiners, supra*, 11 Cal.3d at p. 17, italics in original.) Petitioner has failed to carry this burden.

If, as respondents argue and we are inclined to hold, the class of similarly situated persons comprises all developers who have entered into a secured ***891** agreement to obtain a school-availability letter, then no discrimination at all appears: the Board has col-

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lected fees as they have become due and has stated its intent to continue to collect them. But even if, as petitioner responds, the class comprises all developers who are currently building in the district, still no unlawful discrimination emerges. The Board entered into secured agreements covering certain developments proposed in 1978 and 1979 because it expected them to cause or aggravate overcrowding in neighboring schools. The Board has not entered into such agreements covering developments proposed subsequently because it has not expected them to have such an adverse effect. Thus if developers currently building in the district are treated differently, such difference is reasonable and therefore lawful: developers who are expected to cause or aggravate overcrowding are required to mitigate it, others are not.

The judgment is reversed. [FN7]

> FN7 Because of our disposition we do not reach the question whether petitioner waived its right to the fees it paid under protest by accepting the benefits of the agreement with the District.

Bird, C. J., Kaus, J., Broussard, J., Reynoso, J., Grodin, J., and Lucas, J., concurred. *892

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(Cite as: 41 Cal.App.4th 1257)

H

CASTAIC LAKE WATER AGENCY, Plaintiff and Appellant,
v.
CITY OF SANTA CLARITA et al., Defendants and Respondents.
No. B088277.

Court of Appeal, Second District, California.
Dec 21, 1995.

SUMMARY

A city and its redevelopment agency adopted a community recovery plan prepared by the city's staff following a major earthquake, found that adoption of the plan and all related documents was exempt as a project from the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and recommended adoption of the plan by the city council. The city council approved and adopted the plan, also finding it exempt from CEQA, as a project pursuant to Pub. Resources Code, § 21080, subd. (b)(3) and (4) (exemption for projects undertaken to repair damage from a disaster and to prevent or mitigate an emergency), and a notice of exemption was filed with the county clerk. A public agency that supplied water to the area that was subject to the plan petitioned for a writ of mandate challenging the finding by the city and agency that the project was exempt from CEQA. The trial court denied the petition. (Superior Court of Los Angeles County, No. BC101876, Robert H. O'Brien, Judge.)

The Court of Appeal reversed with directions to the trial court to grant a peremptory writ of mandate ordering the city and agency to vacate their notice of exemption. The court held that the trial court erred in allowing the city and agency to assert the defense of exhaustion of administrative remedies, as there are no administrative procedures that must first be followed before such a petition for a writ of mandate is filed. The court also held that the trial court erred in concluding that the recovery plan qualified for an emergency exemption under CEQA, since the plan unmistakably evinced a predominant focus on infrastructure and economic revitalization measures rather than the activities listed in the exemption statutes. The plan encompassed much of the city and sought to construct facilities independent from the earthquake, infrastructure improvements to alleviate deficiencies in the city's traffic and to prepare for future disasters, a storm drain and parks space system, commuter rails and bikeways, and to redevelop sites identified as important to the success of the community's economic development and revitalization efforts. (Opinion by Lillie, P. J., with Johnson and Woods (Fred), JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Pollution and Conservation Laws § 1.8--California Environmental Quality Act--Exemptions--Challenge to Finding of Exemption--Exhaustion of Administrative Remedies.
In a writ proceeding, brought by a public agency that supplied water to an area damaged by a major earthquake, challenging the findings of a city and a redevelopment agency that the community recovery plan adopted was exempt from the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the trial court erred in allowing the city and agency to assert the defense of exhaustion of administrative remedies. The filing of a notice of exemption from CEQA and the posting on the list of notices start a 35-day statute of limitations period on legal challenges. The public agency filed its petition for a writ of mandate within that period. There are no administrative procedures that

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must first be followed before a petition for a writ of mandate is filed. It would be paradoxical to construe CEQA to require the public agency to present a complete explication of its objections to the claimed exemption before the filing of the notice of determination that the project is exempt.

(2) Pollution and Conservation Laws § 1.8--California Environmental Quality Act--Exemptions--Disaster Repair and Prevention.
In a writ proceeding, brought by a public agency that supplied water to an area damaged by a major earthquake, challenging the findings of a city and a redevelopment agency that the community recovery plan adopted was exempt from the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the trial court erred in concluding that the recovery plan qualified for an emergency exemption under CEQA (Pub. Resources Code, § 21080, subd. (b)(3), (b)(4)) (exemption for projects undertaken to restore or prevent damage from disaster). The plan unmistakably evinced a predominant focus on infrastructure and economic revitalization measures rather than the activities listed in the exemption statutes. The plan encompassed much of the city and sought to construct facilities independent from the earthquake, infrastructure improvements to alleviate deficiencies in the city's traffic and to prepare for future disasters, storm drain and a parks space system, commuter rails and bikeways, and to redevelop sites identified as important to the success of the community's economic development and revitalization efforts.
[See 4 **Witkin,** Summary of Cal. Law (9th ed. 1987) Real Property, § 591.]
(3) Pollution and Conservation Laws § 1.8--California Environmental Quality Act--Exemptions--Disaster Repair and Prevention--Narrow Construction.
An extremely narrow exception to the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is accorded for emergencies (Pub. Resources Code, § 21080, subds. (b)(3), (b)(4)). "Emergency" as defined by Pub. Resources Code, § 21060.3, is an occurrence, not a condition, that involves a clear and imminent danger, demanding immediate action. The theory behind these exemptions is that if a project arises for which the lead agency simply cannot complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the requirement of an environmental impact report (EIR) is justifiable. It is difficult to imagine a large-scale public works project that could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster; such a broad construction would be unmistakably opposed to the policy of construing CEQA to afford the maximum possible protection of the environment.

(4) Public Housing and Redevelopment § 5--Redevelopment--Submission of Plan--Requirement of Environmental Impact Report.
The requirement to undertake environmental review has not been deleted from the Community Redevelopment Financial Assistance and Disaster Project Law (Health & Saf. Code, §§ 34000, 34013). Health & Saf. Code, § 34013, dispenses with many prerequisites for redevelopment and urban renewal projects in "disaster areas" but compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) is not one of them. Health & Saf. Code, § 33352, provides that every redevelopment plan submitted by the agency to the legislative body be accompanied by an environmental impact report (Pub. Resources Code, § 21151).

COUNSEL

Robert H. Clark, Kane, Ballmer & Berkman, Murray O. Kane and R. Bruce Tepper, Jr., for Plaintiff and Appellant.

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Carl K. Newton, City Attorney, Burke, Williams & Sorensen, J. Robert Flandrick, Harold A. Bridges and Deanna L. Ballesteros for Defendants and Respondents.

LILLIE, P. J.

Castaic Lake Water Agency (Castaic) appeals from judgment entered following denial of petition for writ of mandate. Castaic contends the court erred in concluding that the City of Santa Clarita (the city) and the Santa Clarita Redevelopment Agency (the agency) properly proceeded with a redevelopment plan under an exemption from the requirement of an environmental impact report pursuant to the California Environmental Quality Act (CEQA.) FN1

FN1 Public Resources Code section 21000 et seq.

Statement of Facts and Procedural History

The Northridge Earthquake occurred on January 17, 1994. On that same day, the federal government declared that a major disaster existed in the State of California, the Governor proclaimed a state of emergency in Los Angeles County and the city proclaimed a local emergency. On January 25, 1994, the city council authorized city staff to proceed with the preparation of a redevelopment plan for the disaster area. On February 8, 1994, the city council, by resolution, found that the entire city required a study to determine if a redevelopment project within the area was feasible. The resolution also noted the city had identified a critical need for economic development and community revitalization as incorporated in the general plan and deemed redevelopment to be necessary to achieve the goals and objectives contained therein. On February 11, 1994, the city and the agency each published notice of the hearing to be held on February 22, 1994, regarding the proposed adoption of the Santa Clarita Community Recovery Plan (the plan). The notice advised that the purpose of the plan was "to alleviate the damage caused by the January 17, 1994, so-called 'Northridge' earthquake, and succeeding and following aftershocks and related earthquakes and to provide for and facilitate the repair, restoration, demolition, and/or replacement of property or facilities damaged as a result of a disaster in the Project Area; to take all action necessary to prevent or mitigate emergencies arising out of the disaster; to eliminate blight in the Project Area; and to cause economic redevelopment and community revitalization of the Project Area as provided in the adopted General Plan." The notice further advised that persons interested could contact the deputy city manager for information concerning *1261 the nature and extent of the plan and other related documents and that copies of the plan and related documents were on file and available for public inspection in the office of the city clerk.

On February 22, 1994, a joint public hearing of the city council and the agency board was held to consider the plan. City Manager George A. Caravalho in his agenda report indicated that since the January 17th earthquake, "staff has followed Council direction to pursue all avenues of possible relief. One such opportunity holding the promise of significant investment in the community is the creation of a Community Recovery Plan pursuant to the State Community Redevelopment Financial Assistance and Disaster Law. The proposed Recovery Plan can provide for disaster relief and, beyond that, long-term economic development and community revitalization. The latter has been of real interest to Council and the community for some time." The

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agenda report of Caravalho listed the primary purposes of the plan were to provide earthquake disaster relief, provide community infrastructure, conduct economic development/community revitalization activities as contained in the general plan and undertake improvements in community housing.

A report to the city council on the plan described the physical and economic conditions existing at the project site and stated that because of the age of structures, portions of the project area suffered from localized occurrences of deferred maintenance and substandard housing, which also affected housing values and rents. Estimated damage reports for the city indicated that the earthquake caused total private property damage of approximately $144,215,000. The report stated that the project area included parts of the formerly unincorporated areas of Valencia, Newhall, Canyon Country and Saugus, and that in 1988, near the date of city incorporation, a survey conducted by the county had identified infrastructure needs of the entire Santa Clarita Valley which would have required an expenditure of approximately $911 million in order to bring improvements up to typical urban standards. The report also stated that in 1992 a study of a part of the project area by GRC Redevelopment Consultants indicated that over 50 percent of the units surveyed were in need of some form of repair.

The report included a five-year implementation plan with four goals. Goal 1 was to assist in the repair and rehabilitation of damaged businesses and homes, assist homeowners and landlords with grant and loan funds to repair structural damage caused by the disaster, assist commercial, industrial and office owners to return their properties to profitable use, assist mobilehome owners and provide technical assistance to homeowners, landlords, and business owners in expediting their plans through any permit process. ***1262**

Goal 2 was to repair the infrastructure damaged by the disaster and to meet the ongoing and future needs of the community. It included repairing the estimated $20 million damage caused to the city's infrastructure, repairing storm drains, traffic signals, roadways, public buildings, parks, roadway medians and bridges, and participating in the financing of the city's uninsured losses to its public buildings and associated relocation costs of private tenants. It also included repair and structural rehabilitation in association with other public agencies if needed. Also listed was the mitigation of existing infrastructure deficiencies. It stated that "[i]n order to expedite the Community's recovery from the Disaster, it will be necessary to construct infrastructure improvements which alleviate the current severe deficiencies in the City's traffic, storm drain, and park space systems. The 1988 Daniel, Mann, Johnson and Mendenhall Study of Santa Clarita Valley infrastructure deficiencies will be used as a guide, in addition to the current City Capital Improvement Program (CIP). According to the 1993 Five-Year CIP there is over $140,000,000 of needed capital improvements which are unfunded or which require a significant City share. These improvements include San Fernando Road, the Southern Pacific Railroad Corridor and other critical east-west and north-south thoroughfares." Another program was the construction of infrastructure to prepare for future disasters, specific projects included the development of an emergency operations center on the civic center site, rehabilitation and structural reinforcement of existing bridges, abutments, critical public safety facilities and other structures which may fail during any future disasters. The plan also called for the construction of circulation improvements and stated, "The Disaster, and the resulting freeway closures, indicated a need to prepare for future Disasters through the improvement of non-vehicular transportation modes and additional thoroughfares. The Agency proposes to participate in the provision and construction of Metrolink improvements, one or more Park and Ride facilities, community bikeways, commuter rail trail, the Santa Clara River bikeway, Sierra Highway Bridge im-

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provements, Via Princesa corridor construction and other similar circulation improvements." The plan also proposed to use the city's economic development and community revitalization element of the general plan to guide in the construction of other improvements necessary to preserve and enhance the community's economic base.

As goal 3, the agency proposed to provide for the economic development and revitalization of the community in accordance with the general plan. This included the redevelopment of various sites in the community which had been identified as important to the success of the community economic development and community revitalization efforts, including the Newhall Commercial Corridor, the Bermite Site, the Saugus Rehabilitation Center ***1263** site, Soledad Canyon Road. It also included aggressive economic development efforts essential to the creation of additional jobs and the mitigation of the effect of the disaster on the economic and investment climate of the community. The report stated "[t]hese efforts may include land assembly for major development projects, assistance with needed infrastructure which cannot be afforded by the private sector acting alone, land cost writedown in accordance with State Community Redevelopment Law, and other eligible forms of assistance. These funds may also be used for community meeting center improvements associated with tourism."

Goal 4 was to improve and expand the community's supply of lowand moderate-income housing. The most immediate need was for replacement housing for structures which had been damaged beyond economic repair, estimated to be over 133 units. Grants and loans were to be provided to qualifying families for major repairs and rehabilitation and to property owners with 50 percent or more of tenants eligible as low-income households. The plan called for implementation of the general plan housing element policy 1.g., which called for loans in association with local lending institutions to encourage the development of infill parcels. Also included in this goal was a first time home buyers program, to institute a program, in conjunction with local lenders and mortgage brokers, to provide down payment assistance and second trust deeds. The plan called for the provision of parcels for the development of self-help, sweat-equity programs for lower income households, where appropriate the provision of additional funds to target abatement of nuisance properties in lower-income neighborhoods, the allocation of funds for a program which provides grants for emergency repairs for very low income households and disabled residents, funding for projects which meet the agency's inclusionary housing requirements under the Community Redevelopment Law, and the provision of housing for senior citizens, large families and the homeless.

The report also stated that a lifetime expenditure of $1.1 billion was projected as a result of the recovery plan implementation. The report stated "[i]f the earthquake damage estimate is pegged at $210 million dollars, then a 'loan' (or bonds) issued to meet this cost would require annual payments of 13.7 million dollars over a thirty (30) year period for a total expenditure of $410 million dollars. Using the county's 1988 Daniel, Mann, Johnson, Mendenhall infrastructure deficiency study as a guide, some $911 million dollars in infrastructure deficiencies exist in our community. Financing of this cost as above would yield annual payments of $59.3 million dollars and an ultimate bottom line of $1.778 billion dollars."

The project area boundaries were drawn initially to include the entire city, 27,321 acres, as of the date of its incorporation in December 1987. Thereafter, the city removed 8,670 acres of land from the project. ***1264**

Don Duckworth, special consultant, employed by the city to assist in the development of the plan reported that while the city had just incorporated, hired staff, adopted capital improvements and operating budgets, the earthquake seemed to knock the

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city "back to the bottom of the hill and put [it] in a position where you have to start all over." He reported, though, that they had been able to find a "silver lining." He described the silver lining as the "opportunity for the Council to recover by utilizing the Community and Redevelopment Disaster Law in order to, not only recover and provide disaster relief from the earthquake, but also to advance some principal purposes that you identified in your adopted General Plan."

By resolution, the agency adopted the plan and recommended its adoption by the city council. The agency found that the adoption of the plan and all related documents was exempt as a project from CEQA. The city council, thereafter, approved and adopted the plan and found that the plan and related documents were exempt from CEQA as a project pursuant to Public Resources Code section 21080, subdivision (b)(3) and (4).

On or about February 25, 1994, a notice of exemption was filed with the county clerk of the County of Los Angeles.

On March 31, 1994, Castaic, a public agency that supplies water to the Santa Clarita Valley, filed a petition for writ of mandate in superior court challenging the finding by the city and agency that the project was exempt from CEQA pursuant to Public Resources Code section 21080, subdivision (b)(3) and (4).

Discussion

The parties agree that the applicable standard of review is pursuant to the provisions of Public Resources Code section 21168.5. That section provides in relevant part that in an action or proceeding, other than one under section 21168, "to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 568 [38 Cal.Rptr.2d 139, 888 P.2d 1268]; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 [253 Cal.Rptr. 426, 764 P.2d 278].) " 'Substantial evidence' is defined by the Guidelines ... [and] '... means enough relevant information and reasonable inferences from this information ***1265** that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.' (Guidelines, § 15384, subd. (a).)" (*City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 821-822 [17 Cal.Rptr.2d 766].) FN2

FN2 References to Guidelines are to the state CEQA guidelines which implement CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.)

I. Exhaustion of Administrative Remedies

The Legislature has established statutory exemptions from CEQA. (See Pub. Resources Code, § 21080, subd. (b).) "The determination of whether an activity is exempt from CEQA is made as a part of the preliminary review process. That process is described in Guidelines section 15060, which makes it clear that the applicability of an exemption must be made *before* the agency begins its formal environmental evaluation of the project." (*City of Pasadena v. State of California*, *supra*, 14 Cal.App.4th at p. 820, italics in original, fn. omitted.) When a public agency decides that a project is exempt, it may file a notice of exemption. The filing of such a notice and the posting on the "list of

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notices" start a 35-day statute of limitations period for legal challenges to the agency's decision that the project is exempt from CEQA. If a notice of exemption is not filed, a 180-day statute of limitations applies. (Guidelines, § 15062, subds. (a) and (d).) A project that is statutorily exempt is exempted from all further CEQA provisions.

(1) Appellant asserts that the trial court incorrectly allowed respondents to assert the defense of exhaustion of administrative remedies. FN3 We agree. The Guidelines provide that the filing of a notice of exemption and the posting on the list of notices start a 35-day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. Castaic filed its petition for writ of mandate within that statutory ***1266** period satisfying the requirements of the guidelines. Nowhere in these guidelines are there administrative procedures that must first be followed before a petition for writ of mandate may be filed. "It would be paradoxical to construe CEQA to require [Castaic] to present a complete explication of its objections to the claimed exemption" before the notice of determination that the project is exempt is filed. (See *City of Pasadena v. State of California*, *supra*, 14 Cal.App.4th at p. 821.)

> FN3 Public Resources Code section 21177, subdivision (a) provides: "No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." Subdivision (b) provides: "No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." Subdivision (e) provides that this section "does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law."

To the extent that respondent argues that Castaic was present at a public hearing where the plan was adopted and should have objected to the finding that the project was exempt, the record reflects that Castaic's general manager asked for a delay in the proceedings in order to consult with its board but said request was ignored.

II. Exemption Under CEQA

(2) Appellant contends that the trial court erroneously held the recovery plan qualified for an emergency exemption under CEQA. That contention is well taken. Public Resources Code section 21080, subdivision (b)(3) exempts from CEQA "Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code." Public Resources Code section 21080, subdivision (b)(4) exempts "Specific actions necessary to prevent or mitigate an emergency." Public Resources Code section 21060.3 defines emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes

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such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage."

In concluding that the project was exempt from CEQA, the trial court stated: "The fact that a pre-disaster potential redevelopment plan addressed conditions that a disaster restructuring plan also addresses is not a determinative factor. [¶] Moreover, net monetary earthquake damage (e.g., $210,790,863) does not necessarily limit the scope of a redevelopment plan properly exempted from CEQA. Simply repairing earthquake damage is not the purpose of the disaster exemption. It is within the scope and purpose of the Disaster Law (see, e.g., Health and Saf., §§ 34013, 34004) that an entire area of a potential redevelopment plan or urban renewal project may be ***1267** included in a proper exemption. Even though parts of the precise redevelopment area were not directly damaged by the disaster, so long as there is a logical synapse between the precisely damaged property, which needs immediate attention, and the other undamaged property within the plan and within the affected land use sphere of damaged property, the Disaster Law applies. Those conditions are met here."

As appellant argues, the administrative record "unmistakably shows a predominant focus" on infrastructure and economic revitalization measures rather than the activities listed in the exemption statutes. Public Resources Code section 21080, subdivision (b)(3), plainly and expressly exempts only those projects "to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area." The proposed plan encompasses much of the city and in addition to maintaining, repairing, restoring, demolishing or replacing property or facilities damaged or destroyed by the Northridge earthquake seeks to among other things construct facilities independent from the earthquake, infrastructure improvements to alleviate deficiencies in the city's traffic, storm drain and parks space system identified in a 1988 study, construct infrastructure to prepare for future disasters, construct commuter rails and bikeways, and to redevelop sites identified as important to the success of the community's economic development and revitalization efforts.

Additionally, the plan is not limited to those specific actions "necessary to prevent or mitigate an emergency" as required by the exemption contained in Public Resources Code section 21080, subdivision (b)(4).

(3) In *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal.App.3d 1104 [232 Cal.Rptr. 359], the court reasoned: "The 'emergency' exception of section 21080, subdivision (b)(4) is obviously extremely narrow. 'Emergency' as defined by section 21060.3 is explicit and detailed. We particularly note that the definition limits an emergency to an '*occurrence*,' not a condition, and that the occurrence must involve a '*clear and imminent danger, demanding immediate action.*' [¶] ... '... The theory behind these exemptions is that if a project arises for which the lead agency simply *cannot* complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the EIR requirements is justifiable. For example, if a dam is ready to burst or a fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper.' [Citation.] [¶] Although SBVMWD urges that 'CEQA, including its environmental impact report requirements, shall not apply to specific actions necessary ***1268** to prevent or mitigate earthquakes or other soil or geological movements,' this interpretation is unsupported by the text of the exemption. Such a construction completely ignores the limiting ideas of 'sudden,' 'unexpected,' 'clear,' 'imminent' and 'demanding immediate action' expressly included by the Legislature and would be in derogation of the canon that a construction should give

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meaning to each word of the statute. [Citation.] Moreover, in the name of 'emergency' it would create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project, such as an extensive deforestation project or a new freeway, which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster. The result could hardly be intended by the careful drafting of the Legislature, and is unmistakably opposed to the policy of construing CEQA to afford the maximum possible protection of the environment. [Citation.]" (187 Cal.App.3d at pp. 1111-1112, italics in original.)

Contrary to respondents' assertion, the record here does not present a situation where " '[R]ules regulating the protection of the environment ... [have been] subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132 [26 Cal.Rptr.2d 231, 864 P.2d 502].) Rather, it appears that this is an attempt to use limited exemptions contained in CEQA as a means to subvert rules regulating the protection of the environment.

(4) While the trial court stated the project was within the scope and purpose of the Community Redevelopment Financial Assistance and Disaster Project Law (Health & Saf. Code, §§ 34000, 34013) the requirement to undertake environmental review has not been deleted from that law. Health and Safety Code section 34013 dispenses with many prerequisites for redevelopment and urban renewal projects in "disaster areas" but compliance with CEQA is not one of them. Health and Safety Code section 33352 provides in pertinent part that "Every redevelopment plan submitted by the agency to the legislative body shall be accompanied by a report containing all of the following: [¶] ... [¶] (k) The report required by Section 21151 of the Public Resources Code." Public Resources Code section 21151 relates to the preparation and completion of the environmental impact report.

Based on the foregoing, we conclude that there is no substantial evidence in the record to support the determination that the adoption of the plan is exempt as a project from CEQA. ***1269**

Disposition

The judgment is reversed with directions to the trial court to grant a peremptory writ of mandate ordering respondents to vacate their notice of exemption. Each party to bear its own costs on appeal.

Johnson, J., and Woods (Fred), J., concurred.

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32 Cal.App.3d 795, 108 Cal.Rptr. 377, 5 ERC 1431, 3 Envtl. L. Rep. 20,513
(Cite as: 32 Cal.App.3d 795)

COUNTY OF INYO, Plaintiff and Appellant,
v.
SAM YORTY, as Mayor, etc., et al., Defendants and Respondents
Civ. No. 13886.

Court of Appeal, Third District, California.
June 5, 1973.

SUMMARY

The County of Inyo filed a complaint in the trial court seeking to enjoin the City of Los Angeles from extracting subsurface water from lands in the county pending the filing of an environmental impact report as required by the Environmental Quality Act, and a determination of the environmental effect of the continued and expanded extraction of subsurface water. The city had started acquiring water rights and land in the area shortly after 1900 and began receiving water through its first aqueduct in 1913. It had continually expanded its well drilling and pumping activities and had placed a second aqueduct in operation before the effective date of the Environmental Quality Act. At the time the action was filed, however, half of the funds estimated as necessary to complete drilling activities for the extraction of additional water remained unspent. A preliminary injunction was denied and a temporary restraining order was dissolved. (Superior Court of Sacramento County, No. 228928, William A. White, Judge.)

On the county's petition for a writ of supersedeas, treated as a petition for a writ of mandate, the Court of Appeal held that the expanded tapping and extraction of water was a severable project and that the filing of an environmental impact report was therefore required. In so holding, the court referred to the guidelines for implementation of the act issued as contemplated thereby by the Secretary of the California Resources Agency. It concluded that the expanded water extraction activity was an "ongoing project" within the meaning of section 15070, of the guidelines in that it might have a significant effect on the environment and a substantial portion of the funds allocated therefor had not been spent. In view of the prior continued modification in the constantly increased intensity and scope of actual and projected ground water withdrawals, the court further concluded that the project fell within another clause of the same section referring to proposed modifications "such that the project might have a new significant effect on the environment." The objectives of the act, the court reasoned, required inclusion of the planning agencies of the county among the places for filing the report. Extensive directions for staying increased extraction of water pending the filing of an impact report and appropriate action thereon were given. No merit was found in the city's defenses of the statute of limitations and laches. (Opinion by Richardson, P. J., with Friedman and Janes, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Public Works and Contracts § 1.5--Environmental Considerations.
Expanded tapping and extraction of underground water by the City of Los Angeles from lands owned by it in Inyo County required the filing of an environmental impact report as required by the Environmental Quality Act in Pub. Resources Code, § 21151, where the county asserted various harmful environmental effects arising from present and proposed increased groundwater pumping of the underground reservoir, where, though a second aqueduct constructed by the city was operative before the effective date of the act, it would only be used to capacity for transportation of subsurface water after escalation of well drilling and pumping, and where only half of the estimated cost of construction of additional wells to bring the subsurface extraction to its full projected capacity had been spent. Thus the expanded extraction of water was an "ongoing project" requiring the filing of a report within the meaning of the guidelines promulgated pursuant to the act for its implementation, as a "project which may have significant effect on the environment," having a substantial portion of its allotted funds remaining unspent, as well as a plan involving continued modification that "might have a new sig-

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nificant effect on the environment."
[See **Cal.Jur.2d,** Conservation, § 2.]
(2) Public Works and Contracts § 1.5--Environmental Considerations.
The objectives of the Environmental Quality Act, including the alerting of the public and its responsible officials to environmental changes before they have reached ecological points of no return, could be met only if the places of filing of an environmental impact report required of the City of Los Angeles with respect to its expanded extraction of underground water in Inyo County included the county planning agencies.

(3) Public Works and Contracts § 1.5--Environmental Considerations.
The 180-day limitation provided by Pub. Resources Code, § 21167, subd. (a), for filing an action alleging that a public agency is carrying out or has approved a project having a significant environmental effect without the filing of an environmental impact report and a determination whether such effect exists is inapplicable to an action filed and pending before the effective date of the statute.

(4) Public Works and Contracts § 1.5--Environmental Considerations.
The defense of laches could not be raised by the City of Los Angeles in an action by Inyo County seeking to halt the city's increased extraction of subsurface waters from lands in the county pending the filing of an environmental impact report under the Environmental Quality Act and a determination of the environmental effect involved, despite the county's knowledge for some four years prior to filing the action of the city's intention to withdraw additional groundwater. In addition to the severability of the continuing activities from prior activities, the city made no showing of prejudice from the delay, and there was evidence that the county had acted with reasonable dispatch under the circumstances. Moreover, public policy requires public officials to obey statutes, and the litigation involved issues as to which the Legislature has declared a clear and all encompassing public interest.

COUNSEL

Frank H. Fowles, District Attorney, and L. H. Bray, Deputy District Attorney, for Plaintiff and Appellant.

Fredric P. Sutherland, Brent N. Rushforth, Carlyle W. Hall, Jr., Mary D. Nichols, John R. Phillips, Ralph Winter and Richard E. Gutting, Jr., as Amici Curiae on behalf of Plaintiff and Appellant.

Roger Arnebergh, City Attorney, Edward C. Farrell, Chief Assistant City Attorney, Kenneth W. Downey, Assistant City Attorney, and Gilbert W. Lee, Deputy City Attorney, for Defendants and Respondents.

RICHARDSON, P. J.

Petitioner (hereinafter "County") sought a writ of supersedeas which we treated as a petition for writ of mandate, and thereupon issued an alternative writ. Respondents filed appropriate reply to the petition and have also in the trial court interposed their demurrer and answer.

These proceedings follow the filing of a complaint by County in the County of Inyo against respondent City of Los Angeles, a municipal corporation, its department of water and power, the president and secretary of the department and commission, its chief engineer who is also *798 general manager, and Does 1 through 20 (all hereinafter "City"). The complaint sought a temporary restraining order, preliminary injunction and permanent injunction to halt the extraction of subsurface waters from the Owens Valley in Inyo County until the filing by defendants of an Environmental Impact Report (hereinafter "EIR") required by the California Environmental Quality Act of 1970 (hereinafter "CEQA"), and a determination of the environmental effect of the continued and expanded extraction of subsurface water. A temporary restraining order was issued by the Inyo County Superior Court limiting any increase in the withdrawal of water in the affected area.

Subsequently, a motion by City for change of venue from Inyo to Sacramento County was granted. A hearing was held in Sacramento County Superior Court which resulted in denial of the application for preliminary injunction and dissolution of the temporary restraining order, from which action the present petition stems. County has also filed notice of appeal.

County generally asserts "error by the trial court in

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application of the Environmental Quality Act to the respondents' activities within petitioner's county." More specifically, County alleges: (1) The order dissolving the temporary restraining order is an appealable order but to await the formal resolution of the appeal, with its attendant delays, will render the substantial questions of law moot in that irreversible environmental damage will have resulted. (2) The trial court erred in its determination that CEQA did not apply to City's activities because of its view that such action was a continuation of a pre-existing activity or project born before the effective date of CEQA.

Narrowly stated, the issue before us is whether City is required to file an EIR with reference to its continued extraction of subsurface waters from the Owens Valley area of County.

Resolution of this issue and an evaluation of the conflicting legal and factual considerations bearing on it require a brief review of the geography of the area and of the history and character of the pertinent relationships between the two public entities involved.

The Owens Valley is located in east central California along the eastern edge of the Sierra Nevada Mountains, and runs in a general north and south direction through Mono and Inyo Counties. The valley is approximately 120 miles in length and from 15 to 30 miles wide, comprising a total area exceeding 3,000 square miles, approximately the size of Belgium. The valley's elevation varies from 3,500 feet to more than 10,000 feet. It is semi-arid but receives in the late spring and early summer, from both the *799 Sierra Nevada on the west and the Inyo and White Mountains on the east, substantial but varying flows of surface water from the melting snowfields. It lies in an area contiguous to and immediately south of Mono County recently described by the Supreme Court in the following manner: "[N]ature's bountiful gifts of majestic mountains, lakes, streams, trees and wildlife have produced in the area one of the nation's most spectacularly beautiful and comparatively unspoiled treasures." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 253 [104 Cal.Rptr. 761, 502 P.2d 1049].) The Owens River is the principal drainage course in the basin, flowing in a parallel north-south axis along the westerly side of the Valley and into Owens Lake which has no natural outlet.

City, faced with the necessity of importing water to serve the needs of a growing metropolitan population in the Los Angeles Basin, began the systematic acquisition of water rights and land in the Owens Valley shortly after 1900. These acquisitions were made for the purpose of acquiring control of the water supply in the area, and at the present time City owns approximately 300,000 acres in Inyo and Mono Counties, comprising roughly 97 percent of the available privately held land. Between the years 1908 and 1913 City constructed a surface aqueduct (the "first aqueduct") between the Owens Valley and City and began receiving Owens Valley water in 1913.

In 1941 City completed what is known as the "Mono Basin Project." This project was designed to gather the natural runoff in the Mono Basin area and to direct it by gravity flow and pumping operations through the Mono Lake watershed into the Owens River system through the Tinemaha Reservoir to the Haiwee Reservoir. The project is a complex of sources, tributaries, conduits, tunnels and storage areas extending 349 miles from Lee Vining to Los Angeles. At a relatively early date, as an auxiliary to the natural precipitation in the area, City commenced the drilling of a large number of wells to tap the subsurface pools of underground water in Owens Valley. These wells were heavily used during dry years to assure, as a supplementary source, a continuous and adequate flow through the first aqueduct. Since 1917 City has drilled more than 360 wells, of which it has pumped 190. Seven of them have been placed in operation since November 1970. Of more significance, as noted below, is the recent great acceleration of pumping operations from existing wells. Further, of the 11 wells drilled since 1963, seven were pumped for public use for the first time and a number of older wells had their capacity increased after the effective date of CEQA.

By 1963 City, prompted by the increasing water needs of a continued ***800** rapidly expanding population, had caused the preparation of a long-term report entitled "Availability and Utilization of Inyo-Mono Water" ("Report"). The Report noted that as of 1963 there had been 21 separate water rights filings by the State of California on streams and lakes in Inyo and Mono Counties for the purpose of providing domestic and recreational uses of water. The Report further indi-

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cated the growing and competing interests in Owens Valley water among various public entities and the increasing challenge to the City's beneficial utilization of it. It noted that in 1934 City had filed on 200 cubic feet per second (cfs) of water in the Mono Basin, but the first aqueduct was not of sufficient capacity to carry all such water to City. According to the Report, City had proposed in 1959 the construction of a second aqueduct to carry water from Owens Valley to the City for the purpose of completing "the development of our Inyo-Mono supply that began over fifty years ago" and to insure that City would not lose certain water rights on which it had filed primarily in the Mono Basin development.

Historically, the first aqueduct conveyed most of the available surface runoff from Owens Valley. It was planned that the second aqueduct would be filled largely from three sources: increased surface diversion from Mono Basin, reduced irrigation of City-owned lands in the affected counties and increased pumping of groundwater reservoirs in Owens Valley.

The cost of the second aqueduct was approximately $91,000,000 of which 96 percent had been expended when the operation of the aqueduct commenced in 1970. Of the approximately $2,000,000 appropriated for construction of additional wells for increased groundwater extraction about 50 percent had been expended prior to the commencement of litigation.

Both the projection and actual utilization of groundwater extraction from Mono and Inyo Counties have steadily increased in the past 40 years. Some understanding of the measure and rapidly increasing tempo at which the groundwater reservoirs have been tapped may be gained from the fact that during 1972 four new wells were constructed in the Independence Well Field alone, having an aggregate present pumping capacity exceeding 40 cfs, and in the same field during 1971-1972 the pumping capacity of existing wells was measurably increased. It appears that using as a base the 35-year period from 1930 to 1965 a long-term average of 10.3 cfs was extracted from the Owens Valley subsurface pools. In 1963 the estimated long-term average groundwater extraction was 89 cfs. This has increased to a present pumping capacity of 240 cfs. City envisions a proposed ultimate pumping capability of 485 cfs. This would result in an *801 average long-term groundwater extraction of 147 cfs. This continual upward revision of pumping capacity and long-term average extraction was directed to the constant outflow of 666 cfs - the design capacity of the two aqueducts.

The parties substantially disagree on the environmental impact, if any, of this major increase. City, while accepting the possibility of moderate falls in the water table in the affected area, considers this a seasonal and cyclical effect only, manifesting itself to a measurable degree only in excessively dry years. City in its answer to the petition for writ of mandate denied that "any irreparable harm and damage will result to the environment of Inyo County by reason of Respondents' pumping operations and ... [asserted] that the alleged harm to the environment of Inyo County, if any, is a result of an Act of God, to wit, two consecutive drought years."

County, on the other hand, insists that a series of detrimental effects upon the environment necessarily must follow City's continued implementation of the groundwater management policy. It submits an "Evaluation" prepared by its engineering staff describing such effects in the following language: "The implementation of the Department of Water and Power's groundwater management plan will reduce the available water to natural plants and wildlife habitat, with the exception of minor selected areas, to such an extent as to effectively change the natural environment of the Owens Valley. Over a longer period of time, the 'safe yield,' if there is such a quantity, will be consistently exceeded and a permanent decreasing water table will result. The benefits to the people of the Owens Valley from the pumping is negligible." Further, the "Evaluation" states "The initial program of lowering the water table to eliminate the losses due to evapo-transpiration would also eliminate a large portion of our local natural vegetation which fall into the phreatophyte classification. Many of these types of plants (willows, saltgrass, tules, cattails, cottonwoods) require a water table or capillary fringe of not deeper than 10 feet. A continuing decline of the water table would eventually eliminate sagebrush, rabbit brush, and bitter brush, which make up the remainder of our natural vegetation.

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"Eventually, only the selected environmental areas and the areas adjacent to water courses would be able to sustain the natural vegetation of the valley.

"Bird migration - With the drop in the water table, historical ponds and areas of surface water will be eliminated, thus eliminating feed and resting areas for water fowl population. *802

"Local animal population - With the reduction of vegetation and available water, bird and animal populations will also diminish."

Although the narrow central issue presented is whether City's subsurface extraction of water requires the filing of an EIR, a number of component elements may be severally stated as follows: (1) Is City's ground water management program, i.e., its increased groundwater extraction, a "project" within the meaning of CEQA, and, if so, is it an "ongoing project" within the definition established by the Guidelines for Implementation of CEQA adopted by the Secretary of the Resources Agency? In short, is CEQA applicable? (2) As to the EIR, who are its authors and recipients, and what is its effect? (3) Is County barred in these proceedings by either a statute of limitations or the doctrine of laches?

We consider the stated elements sequentially.

The Applicability of CEQA

(1) In response to a general and growing awareness and acceptance of the importance of the natural environment in the lives of its citizens, and the vital necessity of its protection and preservation, the Legislature enacted the Environmental Quality Act of 1970. (Pub. Resources Code, § 21000 et seq. [FN1]) CEQA has been described by the Supreme Court as "a milestone in the campaign for 'maintenance of a quality environment for the people of this state now and in the future ....'" (

FN1 All code references are to the Public Resources Code unless otherwise noted. *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d 247, 252.) Its preamble (§§ 21000 and 21001) contains a broad expression of legislative policy and recognition that the maintenance of a quality environment, present and prospective, "is a matter of statewide concern"; that "[i]t is necessary to provide a high-quality environment that at all times is healthful and pleasing ..."; that "[t]he capacity of the environment is limited ..."; and it is the legislative intent and policy to "take immediate steps to identify any critical thresholds for the health and safety of the people ...," to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state," and to "[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions." To that end the Act adopted a comprehensive plan requiring, among other things, that state and local agencies follow a broad program of governmental action designed to assure that in both the planning and construction phases of "man's activities" primary consideration be given to the effect of such activities on man's environment. In *Mammoth* these requirements were construed to cover the private sector as well. Among CEQA's requirements *803 are those contained in Public Resources Code section 21151, providing that "All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment." Such a report is required to contain a detailed description of any adverse environmental impact and effect of the proposed action, together with any alternative and minimum options available. (§ 21100.)

CEQA received substantial and clarifying amendment in 1972 by the adoption, as an urgency measure, of AB 889, which was responsive to the *Friends of Mammoth* decision cited above. As contemplated by CEQA, certain "Guidelines for Implementation of the California Environmental Quality Act of 1970" ("Guidelines") were issued in 1973 by the Secretary of the California Resources Agency for the purpose of providing "public agencies with principles, objectives, criteria, and definitions ... to be used in the imple-

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mentation of" CEQA. These Guidelines consider and define "ongoing projects," in terms pertinent to our consideration, as activities instituted but not completed prior to the effective date of CEQA. It has been suggested that California has a "three-tier system" - The Act, the Guidelines and local regulations, of which the first two are uniformly applied and to which the third must conform under section 21082. (See Seneker, *The Legislative Response to Friends of Mammoth* (1973) 48 State Bar J. 127.) In ascertaining whether City's activities constitute a "project" and an "ongoing project," we scrutinize the Act, the Guidelines and helpful interpretive decisions.

CEQA in section 21065 defines a project as "(a) Activities directly undertaken by any public agency." The Guidelines (§ 15037) read in pertinent part: (a) *Project* means the whole of an action, resulting in physical impact on the environment, directly or ultimately, that is any of the following:

"(1) an activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof."

The Supreme Court in *Mammoth, supra* (8 Cal.3d at p. 259) faced the definitional problem of "project," albeit in connection with a determination whether a privately funded activity requiring a public permit was a "project" within the meaning of CEQA, and used the following significant language: "In resolving the conflict on intent, as we must, we conclude ***804** that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." The court continued: "As noted previously, the EQA does not attempt to define 'project.' Because the legislative intent provisions dictate that we give a broad interpretation to the act's operative language, we begin from that vantage point. Once a particular legislative intent has been ascertained, it must be given effect "'even though it may not be consistent with the strict letter of the statute.'" [Citation.] As we stated nearly a half century ago in *In re Haines* (1925) 195 Cal. 605, 613 [234 P. 883]: "'The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.'"

After concluding that dictionary definitions were of no assistance to the task before it, the Supreme Court in *Friends of Mammoth v. Board of Supervisors, supra*, at page 260, resorted to the rule which it had declared in *People* ex rel. *S. F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 543-544 [72 Cal.Rptr. 790, 446 P.2d 790]: "A principle 'which must be applied in analyzing the legislative usage of the word "project," is that "the objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in [the word's] interpretation, and where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.'"

It is, therefore, apparent that the ascertainment of the intent of the Legislature in enacting CEQA is vital in the search for a meaningful definition of "project" within this context. The stated policy and intent of the Legislature, clearly expressed in sections 21000 and 21001, to which we have previously adverted, direct that highest priority shall be given to environmental considerations.

County has asserted a catalogue of harmful environmental effects arising from the present and proposed increased groundwater pumping of the Owens Valley underground reservoir, some of which are summarized above. It describes these effects in its "Evaluation" prepared by and attached to the declaration of Ronald Redmond, employed by County's engineering department to study the effects of implementation of City's groundwater management plan. County supports its contentions by referring ***805** to certain challenges by the California Department of Water Resources to the techniques and conclusions of City's report on Water Resources Management Plan. It also

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supports its claims with a series of declarations by residents of Inyo County which, taken together, indicate a general drying of the natural streams and consequent damage to vegetation, foliage and wildlife in the affected area. Under the legislative mandate above expressed, while we need not accept the foregoing as factually established, neither can we ignore the allegations or implications to the environment necessarily flowing therefrom.

City urges strongly that its groundwater extraction program, involving as it does the utilization and pumping of the underground pools in question for purposes of filling the second aqueduct authorized, constructed and operative before the advent of CEQA, and that the second aqueduct and underground pumping are a single, integrated operation and thereby exempt from application of CEQA.

If the two activities are severable, we are thus presented with an issue of somewhat broader implication, namely, since the pumping admittedly has been expanded and accelerated after the effective date of CEQA, to what extent, generally, does CEQA have application to projects commenced before but not completed until after its effective date? This is a problem of first impression in California, and we find guidance in its solution from two principal sources: (1) the Guidelines promulgated February 3, 1973, by the secretary for California Resources Agency to "implement, interpret, or make specific" CEQA, and (2) certain federal cases interpreting the National Environmental Policy Act (42 U.S.C. §§ 4321-4347) (hereinafter "NEPA").

The issue is treated in section 15070 of the Guidelines, denominated "ongoing Project," as follows:

"(a) A project covered by Section 15037(a)(1) definition of project specified by these Guidelines, approved prior to November 23, 1970, shall not require an Environmental Impact Report or a Negative Declaration - unless it is a project which may have a significant effect on the environment, and

"(1) A substantial portion of public funds allocated for the project have not been spent and it is still feasible to modify the project in such a way as to mitigate against potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of 'no project' or halting the project; or

"(2) The responsible agency proposes a modification to the project *806 plan, such that the project might have a new significant effect on the environment."

Bearing in mind the foregoing definition of "project" appearing in section 15037, subdivision (a)(1), of the Guidelines, we observe that while it is true that the second aqueduct was planned, constructed and utilized before the effective date of CEQA, the following are equally true: (1) The water to be used in the second aqueduct has three principal sources - increased surface diversions from Mono Basin, decreased spreading and irrigation of City-owned land in Mono and Inyo Counties, and increased pumping of groundwater reservoirs in the Owens Valley. Further, both aqueducts draw from the Haiwee Reservoir at the southern extremity of the Mono Basin Development which is filled with water drawn from those sources. (2) The second aqueduct can be, and has been, filled entirely by surface runoff from Owens Valley only, without the utilization of any subsurface extraction whatever. (3) While the capacity of both aqueducts was known and presumably fixed irrevocably from the period of planning and design onward (666 cfs), the actual extraction of subsurface water has steadily increased from a long-term average 10.3 cfs during the 35-year period 1935 to 1969, to an estimated 89 cfs in 1963, to an existing capacity of 248 cfs in 1971, to an ultimate capacity of 415 cfs estimated in 1971, to an ultimate pumping capacity of 485 cfs estimated in October 1972. In short, while the capacity of the second aqueduct was fixed and known for a number of years before CEQA, the effect of its construction on subsurface water extraction has been a variable but steady escalation, dependent in large part, no doubt, upon the extent of seasonal rain and snowfall from year to year. Thus the ecological impact of the second aqueduct, viewed in conjunction with the underground pumping and measured by the quantity of extraction, has not been fixed but has substantially increased in severity in the period before, during and after its construction. (4) As of the present time, although approximately 95 percent of the estimated cost of construction of the second aqueduct has been expended, only 50 percent of the estimated cost of construction of additional wells to bring the subsurface extraction to its full

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projected capacity has been spent.

We conclude from the foregoing that the legislative intent so strongly expressed in CEQA can be met only by considering the expanded ground-water extraction as a "project" separate and divisible from the second aqueduct, and we so treat it.

With reference to the groundwater extraction project, we note that as of the present time approximately half of the moneys appropriated for ***807** well drilling and pumping have been expended, and of this sum a substantial amount has been spent since the effective date of CEQA. We further note that the "project" to date has involved a continued "modification" in the constantly increased intensity and scope of actual and projected groundwater withdrawals. We have before us clear evidence that continuance of the subsurface extractions "might have a new significant effect on the environment." Inescapable, in our view, is the conclusion that under either subsection of section 15070 of the Guidelines an EIR is required.

The Supreme Court in *Friends of Mammoth, supra*, has pointed to the identity of purpose of NEPA and CEQA and utilized federal court rulings in reaching its conclusions, using the following language (8 Cal.3d at pp. 260-261): "Not only ... [do] the timing and the titles of the two acts tend to indicate that the EQA was patterned on the federal act, the key provision of the two acts, the environmental impact report, is the same. (Compare 42 U.S.C. § 4332, subd. (2)(C) with Pub. Resources Code, § 21100; see also Pub. Resources Code, §§ 21101, 21102, 21105, 21150, 21151.) Indeed, much of the phraseology of the EQA is either adopted verbatim from or is clearly patterned upon the federal act. As one commentator had observed, the EQA is 'much like the Federal NEPA.' (Powell, *The Courts as Protectors of the Environment* (1972) 47 L.A. Bar Bull. 215, 218.)

"Accordingly, in construing 'project' in the EQA, the definition of that word in the federal act and regulations becomes relevant. It is significant to note, in this regard, the Court of Appeals for the District of Columbia has emphasized that in construing the federal act the judicial role is active and that the NEPA must be interpreted broadly. (See *Calvert Cliffs' Coord. Com. v. United States A. E. Com'n., supra*, 449 F.2d 1109, 1111.) This is consonant with the mandate of the California Legislature that the EQA be given a liberal construction."

In interpreting NEPA several federal cases have applied the requirement of an environmental impact statement (identical to an EIR) to projects which although planned and commenced had reached a point of varying completion. (*Arlington Coalition on Transportation v. Volpe* (4th Cir. 1972) 458 F.2d 1323, highway construction, with completion of roughly 80 percent of property acquisitions, and 80 percent of acquisition moneys expended; *Keith v. Volpe* (1972) 4 ERC 1562, highway construction, $100,000,000 expended; *Morningside-Lenox Park Association* v. *Volpe* (N.D.Ga. 1971) 334 F.Supp. 132, highway construction, "substantial actions" yet to be taken; *Environmental Defense Fund v. Corps of Eng. of U.S. Army* (E.D.Ark. 1971) 325 F.Supp. 749, dam construction, approximately 65 percent completed.) ***808**

No single standard can be gleaned from the federal cases on the issue of the point in time or the degree of completion at which, in the language of *Arlington, supra* (at p. 1331), "the costs of altering or abandoning the project could so definitely outweigh whatever benefits that might accrue therefrom that it might no longer be 'possible' to change the project ...." The *Arlington* court, referring to NEPA, continues: "The congressional command that the Act be complied with 'to the fullest extent possible' means, we believe, that an ongoing project was intended to be subject to Section 102 until it has reached that stage of completion, and that doubt about whether the critical stage has been reached must be resolved in favor of applicability." We have no doubt that the project of underground-water extraction herein presented has not reached such point of effective and practical economic or ecological finality as to render meaningless any enforcement of CEQA.

It follows, accordingly, that City's expanded tapping and extraction of the underground water is an "ongoing project," requiring an EIR within the contemplation of section 15070 of the Guidelines. We think such a conclusion is consistent with the letter and spirit of the legislative purpose strongly asserted and variously expressed in CEQA.

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The Report

(2) Concluding, as we do, that CEQA is applicable to the project in question, we review the nature of the EIR and inquire to whom it is directed, its effect and its purpose.

We consider the pertinent language of several key sections of CEQA in determining the character of EIR. It is defined in section 21061 as "an informational document," whose purpose "is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project."

Section 21100 requires that an environmental impact report shall contain the following: "(a) The environmental impact of the proposed action. (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented. (c) Mitigation measures proposed to minimize the impact. (d) Alternatives to the proposed action. (e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. (f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented. (g) The growth-inducing impact of the proposed action." ***809**

Section 21104 mandates the responsible state agency to consult with public agencies having jurisdiction by law with respect to the project. The section further states that the responsible state agency "may consult with any person who has special expertise with respect to any environmental impact involved." Section 21153 applies similarly to local agencies. Section 15012 of the Guidelines describes the effect of the EIR as a means of informing public decision makers and the general public of the environmental byproducts of anticipated projects, and indicates in the following language the weight of force to be given to it: "The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, examine and institute methods of reducing adverse impacts, and consider alternatives to the project as proposed. ... An EIR may not be used as an instrument to rationalize approval of a project, nor do indications of adverse impact, as enunciated in an EIR, require that a project be disapproved - public agencies retain existing authority to balance environmental objectives with economic and social objectives."

Section 21151 contains the critical language in the following form: "All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of the environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report."

It is therefore apparent the law requires a local agency to prepare an EIR when two conditions are satisfied: (1) It is carrying out a "project," and (2) the project may have a significant effect on the environment. In the case before us, as we have indicated, the expanded groundwater extraction program is a project within the meaning of the Act. In our view, the second criterion is met by the presence of some substantial evidence that the project "may have a significant effect" environmentally.

The necessity for knowledge of the contemplated action of an agency is treated in section 21152, which provides: "Whenever a local agency approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the county clerk of the county, or counties, in which the project will be located. Such notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division." ***810**

Several authoritative expressions indicate the purpose of EIR and the manner in which it is to be prepared. The Supreme Court in *Friends of Mammoth, supra*, has indicated: "The impact report must be specially prepared in written form before the governmental entity makes its decision. This will give members of the public and other concerned parties an opportunity

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to provide input both in the making of the report and in the ultimate governmental decision based, in part, on that report." (8 Cal.3d at p. 263, fn. 8.) In this connection the paramount facts to be considered in preparation of EIR have recently been voiced by the appellate court in *Environmental Defense Fund, Inc. v. Coastside County Water Dist.*, 27 Cal.App.3d 695, 704-705 [104 Cal.Rptr. 197], as follows: "The preparation of the EIR demands thoughtful consideration of public interests transcending such necessary elements as always have been present, e.g., engineering and economic feasibility. Those who prepare the EIR may not limit their vision by the boundaries of the district, nor by purely physical auxiliaries or obstacles to a project's success which may be found beyond the borders. Moreover, the planning agency by criticism and adverse comment may persuade the directors of a district to revise an EIR. Revision of a project itself, or even abandonment, may follow, not by the use of any authority of the planning commission which is not given by the act, but by reason of thoughtful reconsideration.

"But the EIR has another function: the informing of the executive and legislative branches of government, state and local, and of the general public of the effect of the project on that revered resource which we call 'The Environment.' Obviously, the impact often must be deleterious to some extent to virgin land, to air, to beauty of unspoiled places because of the needs of the times. But the EIR must fulfill the role of disclosure of qualified estimations of the best way, all things considered, of meeting the demands of the present while preserving and, if possible, enlarging an ample inheritance for the future."

It is apparent from a review of the foregoing sections and the interpreting decisions that the Legislature in CEQA has enacted a logical and carefully devised program of wide application and broad public purpose. In many respects the EIR is the heart of CEQA. The report referred to in the sections may be viewed as an environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.

CEQA provides no answer, however, to the question, with whom is EIR filed? Although City is required under section 21152 to file with ***811** County a "notice" of its approval of a project subject to its provisions, which notice must indicate the existence of any significant environmental effects and whether an EIR has been prepared, there is no statutory requirement that City file its EIR with County. Yet County is the site of the project, the area in which the ecological damage, if any, will occur, and in which reside those citizens most directly concerned by any such adverse effect upon the environment. The answer to the question posed is suggested by the above cited language from *Environmental Defense Fund, Inc. v. Coastside County Water Dist., supra* (27 Cal.App.3d at p. 704) that "Those who prepare the EIR may not limit their vision by the boundaries of the district, nor by purely physical auxiliaries or obstacles to a project's success which may be found beyond the borders." Furthermore, such a requirement of filing with the planning agency of the affected county is binding upon state agencies (Guidelines, § 15085, subds. (c) and (h), Pub. Resources Code, § 21105), and we observe no reasons of policy requiring a different or lesser performance by a local agency.

Pertinent sections of the Guidelines also suggest certain objectives to be followed by the public agency in preparation of its EIR. Section 15161, for example, insures that public agencies receive adequate comment on their EIR's. Section 15164 provides for public participation as follows: "[I]t is a widely accepted desirable goal of this process to encourage public participation. All public agencies adopting implementation procedures in response to these Guidelines should make provisions in their procedures for wide public involvement, formal and informal, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues."

The foregoing directives suggest the importance of the widest possible local participation in the public decision making process by those authorities charged with the administration of the project. This will be most readily assured by the filing of a copy of the EIR in the particular locality most adversely affected by the project. We think the clear objectives of CEQA, in a case where, as here, the agency required to file is outside of the county most affected, can be met only if

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the filings of EIR include the planning agencies of the county or counties where the project is to be constructed and where significant ecological impact may occur.

The Statute of Limitations

(3) City asserts as an additional defense section 21167, subdivision (a), of the Public Resources Code, establishing a 180-day period from ***812** approval or commencement of a project within which an action or proceeding may be filed alleging that a public agency is carrying out or has approved a project having a significant environmental effect without a report and determination whether such effect exists. Subdivisions (b) and (c) of section 21167 impose 30-day time limitations, running from the filing of notice, on actions alleging either an improper determination whether a project may have a significant environmental effect or that the EIR does not comply with CEQA. These amending statutes were enacted in 1972, becoming effective December 5, 1972. The present action was filed on November 15, 1972, preceding the effective date of the statutes.

We note that the Legislature by these amendments specifically validated projects which, under section 21065, subdivision (c) (involving issuance of a lease, permit, license, certificate or other entitlement for use by one or more public agencies) were "undertaken, carried out or approved" by private agencies on or before the effective date of the section. (§ 21169.) It adopted no similar "saving" clause as to projects carried out by public agencies. (§ 21065, subd. (a).) Furthermore, by section 21170, subdivision (a), the amendatory statutes are expressly inapplicable to proceedings pending and undetermined on the effective date of the section.

Accordingly, we conclude that the 1972 legislation contains no express intent to protect solely public agency projects, as defined in section 21065, subdivision (a), from the application of CEQA. The limitation periods of section 21167 are not applicable to actions of the character herein presented which were filed and pending before the effective date of section 21167.

Laches

(4) City predicates its defense of laches upon the theory that the second aqueduct and the groundwater extraction were and are a single, identical project and that County had been aware since 1968 of City's intention to withdraw groundwater, yet took no affirmative action relative to it until 1972.

In addition to our conclusion that the two activities are severable, we are persuaded to the contrary view by the following:

(1) There is a general public policy in requiring public officials to obey statutes. (*Environmental Defense Fund v. TVA* (1972) 4 ERC 1850, 1861; *City of New York* v. *United States*, 337 F.Supp. 150, 160.)

(2) Laches is available as a defense to an action brought by a public entity (***813***City of Los Angeles v. County of Los Angeles* (1937) 9 Cal.2d 624, 630 [72 P.2d 138, 113 A.L.R. 370].) Indeed the Supreme Court has recognized the possible defense of laches in the application of the very act in question. (*Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d 247, 272.) In the circumstances before us, however, contrary to those usually presented wherein the application of laches is sought, there has been no showing of prejudice to the City by whatever delay has been occasioned. Such a disadvantage or prejudice must be present to establish laches. (*Newport v. Hatton* (1924) 195 Cal. 132 [231 P. 987]; *Environmental Defense Fund v. TVA, supra*, 4 ERC at p. 1861.)

(3) The parties before us are both public entities in litigation involving issues as to which the Legislature has declared, as previously noted, a clear and all encompassing public interest. In *Arlington Coalition on Transportation, supra* (458 F.2d 1323), the court had before it the application of NEPA relative to a freeway far advanced in its planning stages, with most of the acquisition costs expended. NEPA became effective January 1, 1970, and the action involving its requirement of an impact report was filed February 19, 1971. Defendants urged laches as a defense, but the federal court rejected such contention, using the following language: "Nevertheless, we decline to invoke laches against appellants because of the public interest status accorded ecology preservation by the Congress.

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We believe that [the freeway] has not progressed to the point where the costs of altering or abandoning the proposed route would *certainly* outweigh the benefits that might accrue therefrom to the general public. In their reconsideration of the proposed route, the Secretary of Transportation and the Commissioner of the Virginia Department of Highways may decide, of course, that the costs do outweigh the benefits. If the opposite conclusion is a reasonable possibility, however, as it is here, the congressional declaration of policy in the relevant statutes of the importance of the benefits that might accrue demands that the merits of the question be considered by the appropriate agencies." (Pp. 1329-1330.) We find no less strong the explicit legislative expression of public interest in CEQA. The expenditures for the groundwater extraction project approximate only 50 percent of the total planned appropriation for that purpose, and of this a substantial amount, doubtless, was for construction undertaken after the effective date of CEQA.

(4) We also note a vast disparity in the population, staff, budget and research and planning resources available to the two entities before us, which, while not controlling in itself, may be considered by us as one factor in viewing an equitable defense such as laches. There is evidence that County acted with reasonable dispatch once it possessed the report prepared by City's engineers relating to the effect of City's extraction ***814** project, and when it had been able to assemble, collate and evaluate its own staff findings on the environmental effect of the augmented pumping. We therefore reject the defense of laches as a bar to County's action.

Conclusion

The very uncertainty created by the conflicting assertions made by the parties as to the environmental effect of City's expanded groundwater extraction underscores the necessity of the EIR to substitute some degree of factual certainty for tentative opinion and speculation. Where local agency activities "may have" a significant adverse effect on the environment, CEQA contemplates a sequence of formal governmental actions, commencing with an EIR. Such report presumably will stimulate public interest and discussion and the contribution and observations of interested persons and groups, both expert and lay. The major product thereof will be a careful weighing and balancing of all factors by the appropriate public officials. The bases for this process will be the EIR and the opportunity afforded for reasoned discussion. "[M]ajor consideration [will be] given to preventing environmental damage." (§ 21000, subd. (g).) The hoped for result of this process will be a considered policy judgment.

We conclude that City's underground-water extraction constitutes a project within the meaning of CEQA and the filing of an Environmental Impact Report is accordingly required. Public agencies must undertake a searching scrutiny of their action with the long term protection of the environment as the guiding criterion. In response to the legislative mandate, they must now, for the purpose of applying such criterion, pause, even though belatedly, to focus their attention upon and give primacy to ecological considerations. Only if such careful and balanced review precedes their action can they assure that the inheritance of nature from man's yesterday is not subjected to the unintended abuse of today to the irreversible loss of tomorrow.

The Stay Order

The formulation of an appropriate stay order in this matter presents problems of considerable difficulty. We are mindful, on the one hand, of the continued responsibility heavily resting upon City in assuring the continued and adequate flow of water, through fluctuating annual and seasonal changes of precipitation, to a major population center from an area presently furnishing 80 percent of its water. We are also sensitive to the legislative expression, above alluded to, indicating the public policy of this state to "[e]nsure that the long-term protection of the environment ***815** shall be the *guiding criterion* in *public decisions*". (§ 21001, subd. (d)) and to "[r]equire governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality" (§ 21001, subd. (f)). (Italics added.) We have thus a classic confrontation of two competing public entities, each asserting legitimate but conflicting public interests. Furthermore, we are fully aware of the limitations on this court in terms of both its accessibility to the parties and its ability to supervise and "police" its orders in this connection and to conduct evidentiary hearings thereon.

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We cannot speculate on the probable duration of time required in the preparation of the EIR and those procedural steps necessary to the formulation of a responsible and considered judgment in the light of the EIR. We envision the probable need for further evidentiary hearing on the nature and extent of the environmental impact occasioned by City's activities, and other related matters not presently foreseeable. For this purpose the trial court is particularly suited and equipped, and to that end we enlist its aid. We will direct the preparation and certification by City of an EIR in accordance with Public Resources Code section 21151 and will direct also the prompt filing of a copy thereof with the planning agency of Inyo County.

Meanwhile, the augmented and expanded pumping continues, and we are told that observable ecological damage is being sustained daily. County, while not asking for a cessation of Owens Valley groundwater extraction, seeks, pending the filing of an EIR, a limit to the pumping fixed by the quantity of subsurface water extracted November 23, 1970, the effective date of CEQA. A possible alternative is to fix the limit of the amount of the subsurface draw by averaging it over a period of years. Two difficulties inhere in the "averaging" approach. The expanded pumping for the second aqueduct has continued only since 1970, with the result that a mere three-year average is available. Furthermore, in the "averaging" there may be an excess of wet years when the subsurface draw was low or dry years when the extraction was high. Although we recognize that in either formula, the arbitrary selection of a year or the averaging method, standing alone, may create unfairness, we elect to utilize elements of both.

Forthwith and in aid of this court's original jurisdiction to issue its writ of mandate, we stay further extraction of underground water from the Owens Valley Ground Water Basins in excess of the average being taken on November 23, 1970, pending a determination by the trial court of that figure which is found to be the mean or average of the extraction during the years of highest and lowest precipitation from July 1, 1970, to date. When such latter ***816** figure is ascertained, it will be fixed as the maximum allowable withdrawal from the subsurface pool in Owens Valley Ground Water Basins until the filing of an EIR and appropriate action thereon as provided by law. City is directed to modify its extraction in accordance with the stay outlined above. City is further directed to proceed with the preparation and filing of an EIR in accordance with the views herein expressed. The trial court is directed, to the extent necessary or appropriate, to supervise compliance with the Act.

Let a writ of mandate issue, directing City to prepare, certify and file in accordance with law an EIR, and further directing City, pending such preparation, certification and filing to limit forthwith its underground-water extraction in the affected area to the level and for the period hereinabove described.

Friedman, J., and Janes, J., concurred.
On June 29, 1973, the opinion was modified to read as printed above. ***817**

Cal.App.3.Dist.
County of Inyo v. Yorty
32 Cal.App.3d 795, 108 Cal.Rptr. 377, 5 ERC 1431, 3 Envtl. L. Rep. 20,513

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Court of Appeal, Fourth District, Division 2, California.

CITIZENS ASSOCIATION FOR SENSIBLE DEVELOPMENT OF BISHOP AREA, et al., Plaintiffs and Appellants,

v.

COUNTY OF INYO, et al., Defendants and Respondents,

CRUMPLER AND KRUGER COMMERCIAL REAL ESTATE, INC., et al., Real Parties in Interest and Respondents.

E001138, E001340.

Sept. 13, 1985.

Citizens and association challenging proposed shopping center development under the California Environmental Quality Act appealed from judgments of the Superior Court, Inyo County, Donald L. Chapman, J., denying petitions for injunctive relief and for writ of mandate. The Court of Appeal, Morris, P.J., held that: (1) plaintiff had standing; (2) defendants were not prejudiced by addition of association as party plaintiff; (3) owner of subject property was not indispensable party; (4) administrative remedies were exhausted as to all critical substantive issues; (5) county board erred in failing to consider cumulative effect of development project; and (6) plaintiffs established colorable claim to award of attorney fees.

Reversed with directions.

West Headnotes

[1] Mandamus 250 ⚷23(2)

250 Mandamus
2501 Nature and Grounds in General
250k21 Persons Entitled to Relief
250k23 Interest in Subject-Matter
250k23(2) k. Interest as Citizens or Taxpayers. Most Cited Cases
A private citizen's beneficial interest required for standing to apply for a writ of mandate is established only when plaintiff has some private or particular interest to be subserved, or some particular right to be preserved or protected, independent of that which he holds with public at large. West's Ann.Cal.C.C.P. § 1086.

[2] Mandamus 250 ⚷23(2)

250 Mandamus
2501 Nature and Grounds in General
250k21 Persons Entitled to Relief
250k23 Interest in Subject-Matter
250k23(2) k. Interest as Citizens or Taxpayers. Most Cited Cases
Where a public right is involved, and object of writ of mandate is to procure enforcement of a public duty, plaintiff is not required to have any legal or special interest in result; it is sufficient that as a citizen he is interested in having public duty enforced. West's Ann.Cal.C.C.P. § 1086.

[3] Mandamus 250 ⚷23(1)

250 Mandamus
2501 Nature and Grounds in General
250k21 Persons Entitled to Relief
250k23 Interest in Subject-Matter
250k23(1) k. In General. Most Cited Cases

Mandamus 250 ⚷23(2)

250 Mandamus
2501 Nature and Grounds in General
250k21 Persons Entitled to Relief
250k23 Interest in Subject-Matter
250k23(2) k. Interest as Citizens or Taxpayers. Most Cited Cases
In a writ of mandate against a municipal entity based on alleged violations of the California Environmental Quality Act [West's Ann.Cal.Pub.Res.Code § 21000 et seq.], a property owner, taxpayer, or elector who establishes a geographical nexus with site of challenged project has standing; moreover, geographical nexus can be attenuated, for instance beyond city limits, because effects of environmental abuse are not contained by political lines. West's Ann.Cal.C.C.P. § 1086.

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[4] Mandamus 250 ⚷23(2)

250 Mandamus
250I Nature and Grounds in General
250k21 Persons Entitled to Relief
250k23 Interest in Subject-Matter
250k23(2) k. Interest as Citizens or Taxpayers. Most Cited Cases
Citizens of "very small community" who challenged proposed shopping center development based on alleged violations of the California Environmental Quality Act [West's Ann.Cal.Pub.Res.Code § 21000 et seq.] had standing to apply for writ of mandate. West's Ann.Cal.C.C.P. § 1086.

[5] Limitation of Actions 241 ⚷124

241 Limitation of Actions
241II Computation of Period of Limitation
241II(H) Commencement of Proceeding; Relation Back
241k124 k. Intervention or Bringing in New Parties. Most Cited Cases
When there is an attempt to add a party after statute of limitations has run, relation back to original pleadings is dependent upon whether recovery is sought on same general set of facts as those originally alleged. West's Ann.Cal.C.C.P. § 473.

[6] Limitation of Actions 241 ⚷124

241 Limitation of Actions
241II Computation of Period of Limitation
241II(H) Commencement of Proceeding; Relation Back
241k124 k. Intervention or Bringing in New Parties. Most Cited Cases
Citizens' association was properly added as party in action challenging proposed shopping center development even though statute of limitations had passed where addition of the association did not alter general set of facts originally alleged; thus, defendants were not prejudiced and no reasonable purpose would have been served by dismissing the association. West's Ann.Cal.C.C.P. § 473.

[7] Mandamus 250 ⚷168(4)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k168 Evidence
250k168(4) k. Weight and Sufficiency. Most Cited Cases
Evidence supported conclusion that citizens' association sought and obtained permission to be included as party plaintiff in action challenging proposed shopping center development.

[8] Mandamus 250 ⚷151(1)

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k150 Parties Defendant or Respondents
250k151 In General
250k151(1) k. In General. Most Cited Cases
In action challenging proposed shopping center development, petition, which was limited to challenging governmental actions and approvals of general plan amendments and zoning reclassifications, did not require inclusion of owner of subject property; although owner would have been a proper real party in interest, he was not a necessary party because his ability to protect his interest was not impaired or impeded. West's Ann.Cal.C.C.P. § 389(a, b).

[9] Administrative Law and Procedure 15A ⚷669.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak669 Preservation of Questions Before Administrative Agency
15Ak669.1 k. In General. Most Cited Cases
(Formerly 15Ak669)
Less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding.

[10] Environmental Law 149E ⚷665

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek665 k. Exhaustion of Administrative Remedies. Most Cited Cases
(Formerly 199k25.15(3.1) Health and Environment)

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Requirement of exhaustion of administrative remedies was satisfied with regard to all critical substantive issues relating to challenge to proposed shopping center development.

[11] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
(Formerly 199k25.15(7) Health and Environment)
Challenge to proposed shopping center development under the California Environmental Quality Act [West's Ann.Cal.Pub.Res.Code § 21000 et seq.] would be reviewed under substantial-evidence standard of West's Ann.Cal.Pub.Res.Code § 21168.

[12] Environmental Law 149E 577

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek577 k. Duty of Government Bodies to Consider Environment in General. Most Cited Cases
(Formerly 199k25.10(4) Health and Environment)
In reviewing challenge under the California Environmental Quality Act to proposed shopping center development, county board improperly failed to consider cumulative effect of development project; instead of being described as a shopping center development for which governmental action consisting of general plan amendments, zone classification, tentative tract map approval, and road abandonment was required, the project was improperly described as two projects consisting of general plan amendments and zone classification, and tentative tract map approval and road abandonment. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[13] Environmental Law 149E 591

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek591 k. Scope of Project; Multiple Projects. Most Cited Cases
(Formerly 199k25.10(4) Health and Environment)
The California Environmental Quality Act mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a minimal potential impact on the environment, which cumulatively may have disastrous consequences. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[14] Environmental Law 149E 604(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek598 Adequacy of Statement, Consideration, or Compliance
149Ek604 Particular Projects
149Ek604(2) k. Land Use in General. Most Cited Cases
(Formerly 199k25.15(12) Health and Environment)
Upon remand of action challenging proposed shopping center development, county board was to consider reasonably foreseeable probable future projects, if any, that would be added in shopping center area for review as to cumulative environmental effects. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[15] Environmental Law 149E 604(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek598 Adequacy of Statement, Consideration, or Compliance
149Ek604 Particular Projects
149Ek604(2) k. Land Use in General. Most Cited Cases
(Formerly 199k25.10(6.3) Health and Environment)
In determining whether to grant approval of proposed shopping center development, county board was to consider environmental consequences of economic and social changes; specifically, board was to consider whether proposed shopping center would take business away from downtown shopping area and thereby cause business closures and eventual physical deterioration of the downtown area. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[16] Environmental Law 149E 667

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149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek667 k. Record of Administrative Proceeding. Most Cited Cases
(Formerly 199k25.10(6.3) Health and Environment)
Although an initial study relating to proposed development project can identify environmental effects by use of a checklist, it must also disclose data or evidence upon which person(s) conducting the study relied; mere conclusions provide no vehicle for judicial review. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[17] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
(Formerly 199k25.15(10) Health and Environment)
A court reviewing public comment portion of administrative record is limited to evaluating whether there is substantial evidence to support county's decision regarding whether there was adequate evidence produced by plaintiff so that a fair argument could be made that a significant environmental impact could result from challenged proposed project; court may not substitute its own judgment for that of local agency. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[18] Environmental Law 149E 613

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek613 k. In General. Most Cited Cases
(Formerly 199k25.10(5) Health and Environment)
Although even expert opinion may ultimately be rejected because of expert's interest in the matter or for other reasons, an agency evaluating environmental consequences of proposed development project may not refuse to consider uncontradicted testimony based upon objective data. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[19] Environmental Law 149E 593

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek593 k. Controversy. Most Cited Cases
(Formerly 199k25.10(3) Health and Environment)
Public controversy absent substantial evidence of significant environmental effects does not mandate preparation of environmental impact report. West's Ann.Cal.Pub.Res.Code § 21082.2.

[20] Environmental Law 149E 578

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek578 k. Lead Agency; Responsible Entity. Most Cited Cases
(Formerly 199k25.10(1) Health and Environment)
Transportation Department was responsible agency for purposes of the California Environmental Quality Act [West's Ann.Cal.Pub.Res.Code § 21000 et seq.] and, thus, county board was to file its negative declarations relating to proposed shopping center development with State Clearinghouse.

[21] Environmental Law 149E 595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2) Health and Environment)
Alleged conflict between proposed shopping center project and express policies and land use objectives of city's general plan did not necessarily require preparation of environmental impact report. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[22] Administrative Law and Procedure 15A 686

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Deci-

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sions
15AV(A) In General
15Ak685 Costs
15Ak686 k. Attorney Fees. Most Cited Cases
(Formerly 102k173(1))
Citizens who successfully established on appeal that county board failed to conduct adequate environmental review pursuant to the California Environmental Quality Act in approving proposed shopping center development established colorable claim to award of attorney fees. West's Ann.Cal.C.C.P. § 1021.5.

****895 *155** Leonardini & Associates, Sacramento, and Sharon E. Duggan, Napa, for plaintiffs and appellants.

***156** Dennis L. Myers, County Counsel, Independence, for defendants and respondents.

Ave Buchwald and Myron Blumberg, Long Beach, for real parties in interest and respondents.

OPINION

MORRIS, Presiding Justice.

Plaintiffs, Citizens Association for Sensible Development of Bishop Area, et al. (Citizens), appeal from judgments denying its petitions for injunctive relief and for a writ of mandate setting aside and vacating two actions of the Inyo County Board of Supervisors (Board or Board of Supervisors), to wit: (1) the December 6, 1983 action approving Bishop general plan amendments 83-10 and 83-11, zoning reclassification 83-23, and two negative declarations in support of these actions, and (2) the March 6, 1984 action approving tentative tract map 188, road abandonment 83.2, variance 83.4A, and a negative declaration in support of the tentative tract map and road abandonment. On appeal plaintiffs contend that an adequate environmental review pursuant to the California Environment Quality Act (CEQA) (****896**Pub. Resources Code, § 21000 et seq.) was not conducted.

FACTS

On or about September 27, 1983, Crumpler and Kruger Commercial Real Estate, Inc. (Crumpler and Kruger, Inc.), as the buyer in escrow of property located on the north side of U.S. Route 395 east of Barlow Lane in Bishop, California, filed an application with the County of Inyo for approval of a proposed shopping center. The application described the proposed 9.1 acre shopping center as regionally oriented, with an area of 86,500 square feet, which was to be built in one phase. An additional expansion of 12,000 square feet was anticipated for the Safeway store already at the proposed shopping center location. The application also stated that Inyo County approval would be needed for a general plan amendment, rezoning, a street abandonment, new street alignments, and a zoning variance, and that Caltrans authorization would be needed for an encroachment permit. A transportation study was also filed.

In considering the proposed shopping center, the County of Inyo divided the required approvals, along with corresponding environmental review, into two groups. First, it considered Bishop general plan amendments 83-10 and 83-11 and zone reclassification 83-23, which were to redesignate 3.4 acres from office/professional and highway commercial to retail commercial ***157** and rezone from retail commercial/highway commercial to retail commercial. Second, it considered tentative tract map 188, which was to resubdivide 15 lots on 7 acres into 5 lots and realign portions of 4 streets, and road abandonment 83.2. The variance requested, although not subject to an environmental analysis, was also considered in this second grouping.

Beginning with the general plan amendments and zoning reclassification, the Inyo County Planning Department completed two initial environmental studies on October 5, 1983. The studies, which generally used a check list format, found no significant environmental effects, and recommended issuance of draft negative declarations, which were posted the next day. At the end of the 15 day review and comment period as provided in article 5.6, subdivision (c) of the Inyo County Procedures for Environmental Impact Review (now art. IX, subd. (c)), the planning commission held a public hearing which culminated in its written recommendation that the board adopt the general plan amendments, zoning reclassification, and negative declarations. In the planning commission's discussion of its recommendation it expressly stated that traffic would be evaluated at the time the tentative tract map was submitted, as would the requirements for water, sewer, and fire protection. The recommendation was

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"formally appeal[ed]" by a letter signed by seven people and received on November 14, 1983. A subsequent letter to the Board detailed the concerns that 39 signers felt justified an environmental impact report (EIR); other letters in support and against the recommendations of the planning commission were also received.

Thereafter, on December 6, 1983, the Board held a public hearing at the end of which it decided to adopt all of the planning commission's recommendations regarding the shopping center project. Notices of determination indicating the adoption of the negative declarations were posted the next day. All plaintiffs except Citizens Association for Sensible Development of Bishop Area (Citizens Association) timely filed a writ of mandate with the trial court; Citizens Association was added as a party plaintiff by amendment to the writ after the statute of limitations had passed. This describes case No. E001138.

The second group of approvals followed a similar path as the first group, only starting a short time later. On December 7, 1983, the planning department completed an initial environmental study, again generally using a check list format, of tentative tract map 188 and road abandonment 83-2. This study also recommended issuance of a draft negative declaration. The planning commission adopted the tentative tract map, road abandonment and negative declaration,**897 as well as variance 83-4, on January 25, 1984. Twenty-one*158 residents of Bishop appealed that decision, providing a lengthy statement of their reasons for that appeal.

The Board conducted a public hearing on March 6, 1984. It was advised by the planning commission that any discussion of the concurrent consideration of the general plan amendments and zoning reclassifications was irrelevant. At the end of the hearing the board of supervisors denied the appeal, with appropriate notices of determination following on May 14, 1984. All plaintiffs timely filed a second writ of mandate which was to become case No. E001340.

In both case No. E001138 and case No. E001340 the trial court denied any relief to the plaintiffs. Two appeals followed. Because of the similarity of the facts and issues in these two cases, this court ordered their consolidation prior to oral argument.

DISCUSSION

THRESHOLD ISSUES

1. *Standing*

Defendants contend that none of the approximately 20 plaintiffs had standing to apply for writs of mandate. We disagree.

[1][2][3] To have standing to apply for a writ of mandate a private citizen must be a "party beneficially interested." (Code Civ. Proc., § 1086.) Generally, a beneficial interest is established only when a plaintiff " '... has some private or particular interest to be subserved, or some particular right to be preserved or protected, independent of that which he holds with the public at large.' " (*Kappadahl v. Alcan Pacific Co.* (1963) 222 Cal.App.2d 626, 643, 35 Cal.Rptr. 354, quoting 32 Cal.Jur.2d, Mandamus, § 55, p. 238, disapproved on other grounds in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517, fn. 16, 113 Cal.Rptr. 836, 522 P.2d 12.) However, where a public right is involved, and the object of the writ of mandate is to procure enforcement of a public duty, the plaintiff is not required to have any legal or special interest in the result; it is sufficient that as a citizen he is interested in having the public duty enforced. (*Id.*, citing 35 Am.Jur. 73, § 320.) Accordingly, in a writ of mandate against a municipal entity based on alleged violations of CEQA, a property owner, taxpayer, or elector who establishes a geographical nexus with the site of the challenged project has standing. (32 Cal.Jur.2d, Mandamus, § 56, pp. 239-241; see *159*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 272, 118 Cal.Rptr. 249, 529 P.2d 1017; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549, 99 Cal.Rptr. 745, 492 P.2d 1137. Moreover, the geographical nexus can be attenuated, for instance beyond the city limits, because "[e]ffects of environmental abuse are not contained by political lines." (*Bozung v. Local Agency Formation Com., supra.*)

[4] Defendants' contention is that despite the ease of establishing standing in a case such as the instant one, plaintiffs have failed to do so. Defendants base this contention on "[t]he general rule ... that in a mandamus proceeding the burden is on the petitioner to prove every fact that is at the foundation of his proceeding excepting such allegations of the petition as

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are admitted by the answer. [Citations.]" (*Lotus Car Ltd. v. Municipal Court* (1968) 263 Cal.App.2d 264, 270, 69 Cal.Rptr. 384. Real parties in interest assert that because their answer denied plaintiffs' allegations of standing, and plaintiffs never offered proof of this foundational fact, that plaintiffs' cause of action is fatally deficient in this regard.

In fact, some of the plaintiffs offered proof of their standing and others had their standing established by the first answer of defendants, who filed a separate answer from real parties in interest in each case. In case No. E001138 three parties, Mary Baker, Steve Votaw and Dwayne Wilson, testified as to their standing under oath before the Board. In addition, in case No. E001138 Ms. Baker and Mr. Votaw, as well ****898** as ten other plaintiffs (Russell Adams, Del Harper, Pauline Krueger, Don Lauria, Al Norris, Leslie Riccomini, Rodney Rusco, Dick Solesbee, Joe Wilkerson and Susan Wilson), had their standing established by the answer of defendants, which was filed two days after real parties in interest's less knowledgeable answer.

Moreover, the trial court appeared to have found that all plaintiffs had standing. During the hearing on case No. E001138 the court told plaintiffs' counsel that the action was not frivolous because plaintiffs had "a right to be [t]here and be heard." In a very small community like Bishop, the trial court often has personal knowledge of the standing of the parties where such standing consists merely of a taxpayer's geographical nexus with the subject matter of the dispute. (See Evid. Code, § 452, subd. (g).) The trial court's formal holdings in each case are not inconsistent with our conclusion that the court found plaintiffs to have standing.

2. *Addition of Party After Statute of Limitations had Passed*

Defendants contend that Citizens Association improperly injected itself into the litigation without leave of the court after the statute of limitations ***160** had passed. This contention lacks merit. Even if defendants were correct, the only effect would be the dismissal of Citizens Association from civil case No. E001138, the first of the two consolidated cases.

[5] It is clear that a "... court may, in furtherance of justice, ... allow a party to amend any pleading or proceeding by adding ... the name of any party, ..." (Code Civ. Proc., § 473.) When there is an attempt to add a party after the statute of limitations has run, however, relation back to the original pleadings is "dependent upon whether recovery is sought on the same general set of facts as those [originally] alleged." (*Austin v. Massachusetts Bonding & Insurance Co.* (1961) 56 Cal.2d 596, 601, 15 Cal.Rptr. 817, 364 P.2d 681; see *Lamont v. Wolfe* (1983) 142 Cal.App.3d 375, 381, 190 Cal.Rptr. 874.)

[6] When recovery is sought on the same basic set of facts, the main policy of the statute of limitations, to put defendants on notice of the need to defend against a claim in time to prepare a fair defense on the merits, is satisfied. (*Lamont v. Wolfe, supra,* 142 Cal.App.3d at pp. 380-381, 190 Cal.Rptr. 874.) Here the mere addition of a party plaintiff did not alter the general set of facts originally alleged; thus, defendants were not prejudiced and no reasonable purpose would have been served by dismissing Citizens Association from case No. E001138.

[7] Defendants do not directly contest the applicability of *Austin* and its progency, including *Lamont,* to the instant case. Instead, defendants contend that plaintiffs' first amended petition was properly denied because Citizens Association never sought permission to be included as a petitioner. In support of this contention defendants correctly state that under Code of Civil Procedure section 472 plaintiffs did not have a right to add a party plaintiff as a matter of course. (See *Phoenix of Hartford Ins. Companies v. Colony Kitchens* (1976) 57 Cal.App.3d 140, 147, 128 Cal.Rptr. 893; *Taliaferro v. Davis* (1963) 220 Cal.App.2d 793, 795, 34 Cal.Rptr. 120. Nevertheless, it does not follow from this record that plaintiffs never sought nor obtained permission to add Citizens Association. In adding Citizens Association as the named party plaintiff, by amended petition plaintiffs at least implicitly sought the appropriate judicial authorization. Further, when the trial court told plaintiffs during oral argument that they had a right to be there it appeared to confirm that permission had been granted. Finally, the fact that the trial court did not strike the amended complaint, and thus dismiss Citizens Association from the petition, in combination with the fact that the trial court's ultimate decision not to grant the petition was expressly based on other grounds, support the conclusion that the court permitted Citizens Association to be included as a party plaintiff.

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****899 *161** 3. *Indispensable Party*

[8] Defendants contend that dismissal of case No. E001138 is warranted because of plaintiffs' failure to name an indispensable party, the owner of the subject property, in its petition for writ of mandate. The trial court did not specifically rule on this issue. However, we hold that the petition, which was limited to challenging governmental actions and approvals of general plan amendments and zoning reclassifications, did not require the inclusion of the owner of the subject property.

Code of Civil Procedure section 389 sets out the pertinent law. In relevant part it states that: "(a) A person ... shall be joined as a party in the action if ... he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest .... [¶] (b) If a person as described [above] cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." (Code Civ. Proc., § 389, subd. (a), (b).)

Although the owner of the subject property would have been a proper real party in interest, such owner was not a necessary party because as a practical matter his ability to protect his interest was not impaired or impeded. Instead, that interest was ably argued by Crumpler and Kruger, Inc., as a real party in interest. Moreover, because Crumpler and Kruger, Inc. had an option to purchase the subject property from the owner and was in escrow, its interests were essentially the same as if it had been the owner for the purposes of this litigation. Thus, pursuant to the analogous reasoning of *Hollister Co. v. Cal-L Exploration Corp.* (1972) 26 Cal.App.3d 713, 721, 102 Cal.Rptr. 919, and Code of Civil Procedure section 369, which allow the nonjoinder of interested parties where their interests are adequately represented, we hold that the owner of the subject property was not a necessary party. (See also *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1027, 105 CalRptr. 172.) The case cited by real parties in interest, ***162***Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 501, 157 Cal.Rptr. 190, is inapposite because there the real party in interest's legal right to a permit was not represented by any party in a similar position.

Even if the owner of the subject property was impaired in his ability to protect that interest, the owner was not indispensable. The Supreme Court provided guidance in this regard when it cautioned against the common blunder of finding any necessary party as indispensable and observed that "... we should ... be careful to avoid converting a discretionary power or a rule of fairness in procedure into an arbitrary and burdensome requirement which may thwart rather than accomplish justice." (*Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521, 106 P.2d 879; see *Kraus v. Willow Park Public Golf Course* (1977) 73 Cal.App.3d 354, 368-369, 140 Cal.Rptr. 744.)

In "equity and good conscience" we find that pursuant to Code of Civil Procedure section 389 the owner of the subject property was not an indispensable party. The litigation in case No. E001138 generally involved the propriety of the government's actions in approving the general plan amendments and zoning reclassification urged by the developer (and named real party in interest) who had an option to purchase the subject property from the owner and was in escrow. Although the developer has self-servingly declared that it ****900** does not intend to exercise its option to purchase from the owner if judgment is for plaintiffs, none of the other factors listed in Code of Civil Procedure section 389, subdivision (b), favor dismissing this action for nonjoinder of the property owner. Those already parties will not be prejudiced by a judgment rendered in the owner's absence, the judgment will be adequate to fully resolve the dispute (cf. *Sierra Club, Inc. v. California Coastal Com., supra,* 95 Cal.App.3d at p. 501, 157 Cal.Rptr. 190), and plaintiffs would be without a remedy if the action is dismissed for nonjoinder (see Code Civ. Proc., § 389, subd. (b)).

4. *Exhaustion of Administrative Remedies*

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Defendants contend that before an issue may be litigated by plaintiffs it must have been raised by them before the administrative agency. Although we generally agree with this legal principle, we find it to have been satisfied here with regard to all critical substantive issues.

The Supreme Court has applied the doctrine of exhaustion of administrative remedies and its underlying reasoning to environmental legislation. In *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 267, 104 Cal.Rptr. 761, 502 P.2d 1049, the Supreme Court held that: "[T]he Board is entitled to learn the contentions of interested parties before litigation is ***163** instituted. If [plaintiffs] have previously sought administrative relief ... the Board will have had its opportunity to act and to render litigation unnecessary, if it had chosen to do so." (See also *Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control* (1966) 65 Cal.2d 349, 377, fn. 23, 55 Cal.Rptr. 23, 420 P.2d 735; *Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 545, 92 Cal.Rptr. 525.)

[9] On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding. This is because " '[i]n administrative proceedings, [parties] generally are not represented by counsel. To hold such parties to knowledge of the technical rules of evidence and to the penalty of waiver for failure to make a timely and specific objection would be unfair to them.' (Note (1964) Hastings L.J. 369, 371.) It is no hardship, however, to require a layman to make known what facts are contested." (*Kirby v. Alcoholic Bev. etc. Appeals Bd.* (1970) 8 Cal.App.3d 1009, 1020, 87 Cal.Rptr. 908.)

[10] Because we find that the dispositive issue and all relevant substantive issues save one were sufficiently raised before the administrative body, it is unnecessary to consider whether any exceptions to the exhaustion doctrine are applicable here.

Factually, plaintiffs raised the failure to consider the cumulative effect of the project by articulating their concerns about the deterioration of the downtown area and the increase in traffic in a letter signed by 39 people which was sent to the Board of Supervisors prior to the administrative hearing before the Board on the general plan amendments and zoning reclassification. All other substantive issues except one discussed herein were also introduced by letter or by oral comment at the administrative hearing. Resolution of the one pertinent issue not raised before the administrative body, whether Caltrans was a responsible agency and thus whether copies of any or all of the negative declarations were required to be forwarded to the Commerce Clearinghouse pursuant to California Administrative Code, title 14, section 15073, subdivision (c), is not a necessary part of the judgment of this court.

5. *Standard of Review*

[11] There are two standards of review applicable to legal controversies which involve CEQA: Public Resources Code section 21168 or 21168.5. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74, fn. 3, 118 Cal.Rptr. 34, 529 P.2d 66.) Despite the fact that both sides to the instant dispute initially stated that section 21168.5 was here applicable (later, in ***164** case No. E001340, plaintiffs alleged that section 21168 was controlling), we conclude that ****901** section 21168 is the correct standard of review.

Public Resources Code section 21168 states that: "Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division, shall be *in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure*. [¶] In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in light of the whole record." (Emphasis added.) Here section 21168 is controlling because our review is of a decision of a public agency in which the Inyo County Procedures for Environmental Impact Review, article 7.5 (now art. XV), prescribes a hearing for the administrative appeals that here occurred. Further, CEQA requires the taking of evidence. (Cal.Admin. Code, tit. 14, § 15064.) Finally, discretion in the determination of facts is vested in the public agency. (*Id.; Newberry Springs Water Assn. v. County of San Bernardino* (1984) 150 Cal.App.3d 740, 750, 198 Cal.Rptr. 100; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504, 184 Cal.Rptr. 664.)

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Having found Public Resources Code section 21168 applicable, it should be noted that the distinction between that section and Public Resources Code section 21168.5 may often be immaterial. (See *Newberry Springs Water Assn. v. County of San Bernardino, supra,* 150 Cal.App.3d at p. 748, 198 Cal.Rptr. 100.) Without deciding whether the distinction is here material, we hold that pursuant to Code of Civil Procedure section 1094.5, subdivision (b), "[a]buse of discretion is established if the [administrative agency] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

DISPOSITIVE ISSUE: FAILURE TO CONSIDER THE CUMULATIVE EFFECT OF THE PROJECT

1. *Overview*

[12] Plaintiff contends because the Board as the lead agency failed to consider the cumulative effect of the development project the trial court erred in ruling that the lead agency proceeded in the manner required by law. We agree.

***165** In evaluating the actions of the lead agency in light of the guidelines provided by CEQA, we note, in the words of the Supreme Court, " 'that the Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 83, 118 Cal.Rptr. 34, 529 P.2d 66, quoting *Friends of Mammoth v. Board of Supervisors, supra,* 8 Cal.3d at p. 259, 104 Cal.Rptr. 761, 502 P.2d 1049.) Accordingly, "CEQA requires more than merely preparing environmental documents." (Cal. Admin. Code, tit. 14, § 15002, subd. (h).)

2. *Definition of a Project*

[13] Of particular relevance here, CEQA mandates "... that environmental considerations do not become submerged by chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at pp. 283-284, 99 Cal.Rptr. 745, 492 P.2d 1137; see *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1024, 192 Cal.Rptr. 325.) In part, CEQA avoids such a result by defining the term "project" broadly. (Cal. Admin. Code, tit. 14, § 15002, subd. (d).) " 'Project' means the whole of an action, which has a potential for resulting in a physical change in the environment, directly****902** or ultimately, ..." (Cal. Admin. Code, tit. 14, § 15378, subd. (a).) "The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval. [¶] ... Where the lead agency could describe the project as either the adoption of a particular regulation ... or as a development proposal which will be subject to several governmental approvals ... the lead agency shall describe the project as the development proposal for the purpose of environmental analysis." (Cal. Admin. Code, tit. 14, § 15378, subd. (c)-(d); see *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795, 187 Cal.Rptr. 398, 654 P.2d 168; *Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at pp. 283-284, 99 Cal.Rptr. 745, 492 P.2d 1137; cf. *Rural Landowners Assn. v. City Council, supra,* 143 Cal.App.3d at pp. 1024-1025, 192 Cal.Rptr. 325.)

In the instant case for environmental purposes the project before the lead agency should have been described as a shopping center development for which governmental action consisting of general plan amendments, zone reclassification, tentative tract map approval, and road abandonment was required. Instead, the project was improperly described as "two projects": (1) the general plan amendments and zone reclassification, and (2) the tentative tract map approval and road abandonment. Each of the "two ***166** projects" was submitted to a separate environmental review for which separate negative declarations were approved by the Board on December 6, 1983, and March 6, 1984, respectively.

3. *Failure to Consider Cumulative Effect*

The danger of filing separate environmental documents for the same project is that consideration of the cumulative impact on the environment of the two halves of the project may not occur. This danger was here realized.

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In approving the first negative declarations the lead agency considered the general plan amendments and zoning reclassification only; it did not consider the second half of the project. The transmittal letter from the planning commission to the Board of Supervisors stated that "... the property ... is proposed for development with a shopping center....

"...

"At the time the tentative map is considered by the Commission (in December) requirements for water, sewer, fire protection, traffic circulation, curbs, gutters, sidewalks, etc. will be determined. However, at this time we are only considering the General Plan Amendments and the Zoning Reclassification." During the hearing before the Board of Supervisors, Planning Director Hilton, the first speaker, suggested the planning commission's rationale for this division of the shopping center project into two parts with separate negative declarations when he stated that "[i]t would really [be] kind of redundant to get into the details of planning for a tentative tract map and vacating the street if the basic General Plan classifications and rezoning cannot be accomplished." At the end of the hearing the Board, acting as the decision-making body (see Inyo County Procedures for Environmental Impact Review, art. 4.3 (now art. III)) and thus, the lead agency (see Pub. Resources Code, § 21067), approved the first two negative declarations.

In approving the subsequent negative declaration a few months later the same pattern was repeated as with the first two negative declarations, except in reverse. The agency considered the tentative tract map approval and road abandonment only; it did not consider the first half of the project. This time the transmittal letter from the planning commission to the Board of Supervisors stated that "[t]he project before the Planning Commission was not a shopping center since the existing zoning automatically permits that type of land use.... The appeal talks about approval of a shopping center .... The discussion **903 of the Bishop Central Business District; Regional Community Center; Community-Neighborhood Center is totally irrelevant as a *167 shopping center or any other retail commercial development is a permitted use on the site. [¶] The discussion of the concurrent consideration of general plan amendments and zone reclassifications is also irrelevant. These actions, taken by the Board on December 6, 1983 were done properly and legally and are currently under litigation. They have nothing to do with the planning commission's actions of January 25," i.e., adoption of the negative declaration for the tentative tract map and road abandonment. Finally, at the hearing before the Board of Supervisors, when some citizens raised concerns about the general plan amendments and rezoning, Mr. Hilton responded that "... this Board has already approved and the planning commission has approved the general plan change and the rezoning on the property. This is a secondary but important part of the development of the shopping center.... [However], I don't think anything can be gained by rehashing over it." Later in this hearing the Board of Supervisors approved the negative declaration for the second stage of the shopping center project.

The division of the shopping center project into two parts constituted an abuse of discretion by the lead agency. As the portions of the record above vividly demonstrate, although for the same shopping center project, the first two negative declarations and the later negative declaration were considered as mutually exclusive environmental documents. This approach is inconsistent with the mandate of CEQA that a large project shall not be divided into little ones because such division can improperly submerge the aggregate environmental considerations of the total project. (See *Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at pp. 283-284, 99 Cal.Rptr. 745, 492 P.2d 1137.)

4. *Prejudice*

We further hold that this abuse of discretion requires reversal. In an analogous situation it was held in *Rural Landowners Assn. v. City Council, supra,* 143 Cal.App.3d at p. 1023, 192 Cal.Rptr. 325,"... where that failure to comply with the law results in a subversion of the purposes of CEQA by omitting information from the environmental review process, the error is prejudicial. The trial court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected ahd the law been followed. The decision is for the discretion of the agency, and not the courts." The same reasoning applies to this case. The purposes of CEQA were subverted because the lead agency never considered whether the environmental effects of the total shopping center project, properly defined, was signifi-

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cantly adverse and thus required an EIR. At this juncture, as in *Rural Land Owners Assn.*, we cannot exercise our independent judgment on whether the ultimate decision of the lead agency would have been different had CEQA been properly ***168** implemented because such a decision is for the discretion of the agency. (See *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 362, 173 Cal.Rptr. 390; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842, 115 Cal.Rptr. 67.)

Nevertheless, we believe there is a reasonable probability that the lead agency would have prepared one EIR instead of two sets of negative declarations if it had properly defined the project. The Bishop community plan recommended a thorough economic-environmental analysis before development of a regional-community shopping center. One of the five Board members voted against the negative declarations for both the general plan amendments/rezoning and tentative tract map/street abandonment approvals. Both sets of negative declarations were appealed and received substantial public criticism. Finally, the aggregate concerns, including physical deterioration of the downtown business area because of business loss and closure due to competition from the new ****904** shopping center and added traffic, were not insignificant.

5. *Reasonably Foreseeable Probable Future Projects*

[14] Upon remand, defendant should also consider the reasonably foreseeable probable future projects, if any, that will be added in the shopping center area. The environmental "effects of probable future projects" are germane to determining whether the impact of the shopping center is "cumulatively considerable." (Cal.Admin. Code, tit. 14, § 15065, subd. (c); see Cal. Admin. Code, tit. 14, § 15355, subd. (b).) In formulating its list of probable future projects for review as to cumulative effects the lead agency should reasonably interpret the guidelines to afford the fullest possible protection of the environment. (See *Friends of Mammoth v. Board of Supervisors, supra,* 8 Cal.3d at p. 259, 104 Cal.Rptr. 761, 502 P.2d 1049; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74, 198 Cal.Rptr. 634.) There is a "... need for regional environmental consideration at the earliest stage of a planned development before it gains irreversible momentum." (*Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at p. 284, fn. 28, 104 Cal.Rptr. 761, 502 P.2d 1049.)

Related projects currently under environmental review unequivocally qualify as probable future projects to be considered in a cumulative analysis. (*San Franciscans for Reasonable Growth v. City and County of San Francisco, supra,* 151 Cal.App.3d at p. 74, fn. 13, 198 Cal.Rptr. 634.) In addition, even projects anticipated beyond the near future should be analyzed for their cumulative effect. (*Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at p. 284, 104 Cal.Rptr. 761, 502 P.2d 1049.) ***169** In the instant case it appears that probable future projects include the development of three of the five lots which will not initially be developed with the proposed shopping center, but "will eventually be developed with satellite buildings (i.e., bank, offices, service station, restaurant)," and the approximately 265 single-family dwelling units "planned for" north of the shopping center. To the extent the lead agency properly considered these projects in the negative declarations under review, this discussion is intended to affirm the need to do so again.

OTHER ISSUES TO BE CONSIDERED ON REMAND

1. *Relevance of Secondary Effects Caused by Economic and Social Changes*

[15] Plaintiffs contend that the environmental consequences of economic and social changes must be considered by the lead agency. Specifically, plaintiffs contend that the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures and eventual physical deterioration of downtown Bishop. Although the Administrative Code is somewhat ambiguous on this issue, we conclude that it supports plaintiffs' position.

Title 14, section 15064, subdivision (d) of the California Administrative Code states that, "[i]n evaluating the significance of the environmental effect of a project, the lead agency *shall* consider both primary or direct and secondary or indirect consequences." (Emphasis added.) This is further explained as follows: "Primary consequences are immediately related to the project such as the dust, noise, and traffic of heavy equipment that would result from construction

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of a sewage treatment plant and possible odors from operation of the plant. [¶] ... Secondary consequences are related more to effects of the primary consequences than to the project itself and may be several steps removed from the project in a chain of cause and effect. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution." (*Ibid.*)

**905 The unequivocal language just cited becomes less clear in the light of a subsequent passage: "Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic *170 and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as the basis for determining that the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect." (Cal. Admin. Code, tit. 14, § 15064, subd. (f).)

These two subsections should be interpreted consistently if possible. (58 Cal.Jur.3d, Statutes, § 106, pp. 481-482.) In this case the most reasonable consistent interpretation is that the lead agency *shall* consider the secondary or indirect environmental consequences of economic and social changes, but *may* find them to be insignificant. Such an interpretation is unequivocally consistent with the mandate that secondary consequences of projects be considered. Moreover, this interpretation is also consistent with subdivision (f). In particular two aspects of subdivision (f) support this conclusion. First, subdivision (f) expressly gives the agency discretion to determine whether the consequences of economic and social changes are significant, which is not the same as discretion to not consider these consequences at all. Indeed, "... the physical change [caused by economic or social effects of a project] may be regarded as a significant effect *in the same manner* as any other physical change resulting from the project [may be regarded as a significant effect]." (Cal. Admin. Code, tit. 14, § 15064, subd. (f), emphasis added.) Second, in the example provided in subdivision (f) of an adverse effect ultimately caused by economic or social changes, subdivision (f) concludes that the physical change "would be [rather than could be] regarded as a significant effect." (Cal. Admin. Code, tit. 14, § 15064, subd. (f).) Consistent with this example is the one provided in subdivision (d), which mandates that secondary consequences be considered, includeing added air pollution (an environmental effect) caused by the population growth (presumable a social change) facilitated by a new sewage treatment plant. (Cal. Admin. Code, tit. 14, § 15064, subd. (d).)

In the instant case plaintiffs have urged the lead agency to consider whether the proposed shopping center would deprive the downtown business district of necessary revenue, forcing business closures and eventual physical deterioration of the downtown area. Two of the four members of the Board of Supervisors who voted for the negative declarations stated that they failed to see how this was an environmental consequence they needed to consider; the other two expressed no opinion. The fifth supervisor believed that an EIR was necessary and therefore voted against the negative declarations.

*171 On remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center.

2. *Adequacy of Initial Studies*

In administering its responsibilities under CEQA the public agency should implement procedures which contain at least provisions for: conducting initial studies, preparing negative declarations or drafting final EIRs, assuring adequate opportunity and time for public review and comment, evaluating and responding to those comments, and filing documents required by **906 CEQA. (Cal. Admin. Code, tit. 14, § 15022; see Pub. Resources Code, § 21082.)

An important purpose of the initial study is to "[p]rovide documentation of the factual basis for the

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finding in a negative declaration that a project will not have a significant effect on the environment; ..." (Cal.Admin. Code, tit. 14, § 15063, subd. (c)(5).) This purpose is particularly relevant to courts reviewing the administrative action pursuant to Public Resources Code section 21168. As discussed above, Public Resources Code section 21168, and thereby Code of Civil Procedure section 1094.5, apply to the instant case. Section 1094.5, subdivision (b), states that "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, *or the findings are not supported by the evidence.*" (Emphasis added.) The Supreme Court has elaborated that "... implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the *raw evidence* and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra,* 11 Cal.3d at p. 515, 113 Cal.Rptr. 836, 522 P.2d 12, emphasis added; see *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 429-431, 129 Cal.Rptr. 902.)

[16] Therefore, although an initial study can identify environmental effects by use of a checklist (see Cal. Admin. Code, tit. 14, § 15063, subd. (d)-(f)), it must also disclose the data or evidence upon which the person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review. (See *Topanga Assn. for a Scenic Community v. County of Los Angeles, supra,* 11 Cal.3d at p. 516, 113 Cal.Rptr. 836, 522 P.2d 12.)

In the instant case the initial studies are far too conclusionary. It is for the most part impossible to determine whether the findings which ultimately resulted in negative declarations are supported by the evidence because it is unclear that raw evidence, if any, was relied upon in preparing the initial ***172** studies. There were three similar initial studies made, two for the general plan amendments and the zoning reclassification, and one for the tentative tract map and road abandonment. The core of the studies was a quasi-checklist format. For each subcategory (e.g., water supply, sewage disposal, fire protection) the planning department indicated by use of letters whether the impact was adverse, beneficial, or none, and then the degree, phase, linkage and duration. To the extent a negative impact was identified, mitigation measures, if any, were described in the margin and summarized later in the study. Neither the source nor the content of the information relied upon for the more than 45 subcategories which required environmental conclusions in each initial study were specifically identified. In the space that was intended to identify the "departments/agencies/groups consulted" and list "comments" the words "to be" [consulted] were added and no comments were listed in any of the three initial studies. Of course, Crumpler and Kruger, Inc., as the developer, submitted information to the planning commission with its applications for the changes eventually made, but, with the notable exception of a traffic study, even this information was conclusionary. For the most part the specific sources and content of the data the developer relied upon in its application were not disclosed. Upon remand the evidence supporting any initial studies should be disclosed.

3. *Sufficiency of Evidence Introduced During Public Review Period*

Plaintiffs and defendants disagree on whether evidence substantial enough to require an EIR was offered during the public review. Although our remand of this case for the reasons stated above makes resolving this specific dispute unnecessary, a few general comments may provide some guidance on remand.

The public comment or review period is a second important informational step to be completed by the lead agency before approving a negative declaration. (See ****907**Cal. Admin. Code, tit. 14, § 15073, subd. (a).) "[T]he lead agency shall consider ... any comments received during the public review process. The decision-making body shall approve the negative declaration if it finds on the basis of the initial study and any comments received that there is no substantial evidence that the project will have a significant effect on the environment." (Cal. Admin. Code, tit. 14, § 15074, subd. (b); see Pub. Resources Code, § 21083; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 999-1000, 165 Cal.Rptr. 514.)

[17] A court reviewing the public comment portion of the administrative record is limited to evaluating whether there is substantial evidence to support "... the county's decision regarding whether there was adequate evidence***173** produced by plaintiffs so that a fair argument could be made that a significant environmental impact may result from the project." (

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Newberry Springs Water Assn. v. County of San Bernardino, supra, 150 Cal.App.3d at p. 747, 198 Cal.Rptr. 100, see *Friends of "B" Street v. City of Hayward, supra,* 106 Cal.App.3d at p. 1002, 165 Cal.Rptr. 514.) Under this substantial evidence standard of review, the court may not substitute its own judgment for that of the local agency. (*Newberry Springs Water Assn. v. County of San Bernardino, supra,* 150 Cal.App.3d at p. 750, 198 Cal.Rptr. 100; *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 130, 192 Cal.Rptr. 480.)

Nevertheless, if it is clear that considerable evidence was presented and that the evidence was not properly considered by the lead agency the reviewing court may find an abuse of discretion. (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 88, 118 Cal.Rptr. 34, 529 P.2d 66; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles, supra,* 134 Cal.App.3d at p. 505, 184 Cal.Rptr. 664.)

[18] In this case the record does not support defendants' contention that all of the public testimony and letters in the administrative record merely represent fears unsupported by any evidence. First, relevant personal observations are evidence. For example, an adjacent property owner may testify to traffic conditions based upon personal knowledge. Although even expert opinion may ultimately be rejected because of the expert's interest in the matter or for other reasons, an agency may not refuse to consider uncontradicted testimony based upon objective data. (See *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles, supra,* 134 Cal.App.3d at pp. 504-505, 184 Cal.Rptr. 664.)

4. *Relevance of Public Controversy Standing Alone*

[19] Plaintiffs contend that an EIR is required if a substantial public controversy exists. This position is not supported by case law. (See *No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at pp. 85-86, 118 Cal.Rptr. 34, 529 P.2d 66; *Newberry Springs Water Assn. v. County of San Bernardino, supra,* 150 Cal.App.3d at p. 749, 198 Cal.Rptr. 100.) Moreover, the Legislature, by enacting Public Resources Code section 21082.2, made it clear that public controversy absent substantial evidence of significant environmental effects does not mandate preparation of an EIR. Upon remand, Public Resources Code section 21082.2 is the controlling authority.

5. *State Clearinghouse Filing Requirement*

[20] Plaintiffs contend that because Caltrans is a responsible agency it was mandatory that the lead agency file its negative declarations with the State Clearinghouse. For purposes of remand, we agree.

***174** Plaintiffs failed to raise this issue at the administrative hearing. Nevertheless, because defendants must begin the environmental review process anew, some guidance in this area is appropriate.

The administrative guidelines of CEQA provide that "[w]here one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction ****908** by law over natural resources affected by the project, the lead agency shall send copies of the negative declaration to the State Clearinghouse for distribution to the state agencies." (Cal. Admin. Code, tit. 14, § 15073, subd. (c).) Not only does the State Clearinghouse distribute the negative declaration to the one or more responsible agencies, but also to "[r]eviewing agencies ... selected for their expertise in particular subject matters or expressed interest in particular types of projects." (State Clearinghouse Handbook, Office of Planning and Research, Mar. 1984, at p. 4.) In addition, the Clearinghouse maintains and monitors computerized records on past and current development proposals. (*Id.,* at p. 5.) Major issues monitored by the State Clearinghouse that are pertinent here include project consistency with the appropriate local general plan, and planning objectives such as renewal and maintenance of existing urban areas, cumulative effects of projects, and secondary growth impacts of regional shopping centers. (*Id.,* at p. H-1.)

Despite its importance, the parties agree that the State Clearinghouse must be consulted in this case only if Caltrans is a responsible agency. The shopping center project is planned to be constructed adjacent to U.S. route 395. The project application of Crumpler and Kruger, Inc. stated that the necessary encroachment permit would require Caltrans approval. The central question is thus whether Caltrans has "discretionary approval power over the project," the definition of responsible agency for the purposes of CEQA. (Cal. Admin. Code, tit. 14, § 15381.) Pursuant to Streets and Highways Code section 678, the county "... is entitled as a matter of right to a permit, but is otherwise subject

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to the provisions of this article and to all reasonable conditions and provisions made by the department in any such permit." This includes such "conditions as to the location and the manner in which the work is to be done as the department finds necessary for the protection of the highway." (Streets & Hwys. Code, § 672.)

Defendants contend that the county's entitlement to a permit as a matter of right necessarily means that Caltrans does not have "discretionary approval power." Defendants' contention ignores the definition provided in the administrative guidelines to CEQA: " '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, ***175** 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." (Cal. Admin. Code, tit. 14, § 15357.) In contrast " '[m]inisterial' 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." (*Id.*, at § 15369.) Therefore, because Caltrans can condition the right to an encroachment permit upon "the location and the manner" of the encroachment, its approval power is more discretionary than ministerial regardless of the right the county has to the permit as conditioned. (See *Johnson v. State of California* (1968) 69 Cal.2d 782, 788, 73 Cal.Rptr. 240, 447 P.2d 352.) This conclusion finds support in the holding by the Third District Court of Appeal that "doubt whether a project is ministerial or discretionary should be resolved in favor of the latter characterization." (*People v. Department of Housing & Community Dev.* (1975) 45 Cal.App.3d 185, 194, 119 Cal.Rptr. 266.)

6. *Inconsistency of Proposed Project with General Plan*

[21] Plaintiffs contend that the proposed project, which they define as a "regionally-oriented shopping center," conflicts with the express policies and land use objectives of the Bishop general plan. Although there is merit in some of the concerns underlying plaintiffs' contention, we do not agree, as plaintiffs contend, that the alleged conflict with the general plan necessarily required the preparation of an EIR.

It is true that a project would normally be considered to have a significant effect ****909** on the environment if it conflicts with the adopted environmental plans and goals of the community where it is located. (Cal. Admin. Code, tit. 14, appen. G, subd. (a).) However, "... it does not necessarily follow that the Board's decision reclassifying the property ... is inconsistent with the broad policy expressed in the general plan...." (*Environmental Council v. Board of Supervisors* (1982) 135 Cal.App.3d 428, 440, 185 Cal.Rptr. 363.) Moreover, our view of such a claim must focus on whether the lead agency acted "arbitrarily, capriciously, or without any evidentiary basis." (*Id.*, at pp. 439-440, 185 Cal.Rptr. 363; see *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 801, 161 Cal.Rptr. 260.)

The broad objectives of the Bishop community plan (BCP) include (1) retaining and enhancing the downtown area as Bishop's commercial center and (2) encouraging clustering of convenient and mutually compatible commercial activities in desirable locations. It is the tension between these two objectives that is at the crux of whether the proposed shopping center on the outskirts of Bishop is consistent with the BCP. The BCP, anticipating ***176** future population growth, provides for development of four outlying commercial centers, a regional-community center by 1990, two community-neighborhood centers, and a small neighborhood facility. The relatively large regional-community center, according to the BCP, "... should only be developed after a thorough economic-environmental analysis, including a (retail category) market analysis, has concluded that such a facility can successfully co-exist with a vital downtown central business district."

Plaintiffs characterize the proposed shopping center as a regional-community center that clashes with the BCP for want of an economic-environmental analysis. However, the proposed shopping center is best described as a hybrid or regional-community-neighborhood center, because it is smaller than the regional-community center, yet larger than the community-neighborhood centers described by the BCP. Moreover, the BCP only says that an economic-environmental analysis *should* be undertaken, not that it must be.

ATTORNEYS' FEES

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[22] Plaintiffs contend that they are entitled to a reasonable award of attorneys' fees to the extent that their appeal has been successful. Plaintiffs have clearly established a colorable claim to an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5. We remand to the trial court for that court to determine the propriety of attorneys' fees after a hearing which focuses on the criteria established by section 1021.5.

Code of Civil Procedure section 1021.5 states in pertinent part that: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, [and] (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, ..." These criteria have been thoroughly discussed by the Supreme Court in *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 934-942, 154 Cal.Rptr. 503, 593 P.2d 200, and its progeny.

Determining whether Code of Civil Procedure section 1021.5 is applicable, and if so, the amount of attorneys' fees that are reasonable, is generally left to the sound discretion of the trial court. (See *Woodland Hills Residents Assn., Inc. v. City Council, supra,* 23 Cal.3d at p. 941, 154 Cal.Rptr. 503, 593 P.2d 200; *Serrano v. Priest* (1977) 20 Cal.3d 25, 49, 141 Cal.Rptr. 315, 569 P.2d 1303; *177 *Brennan v. Board of Supervisors* (1984) 153 Cal.App.3d 193, 197, 200 Cal.Rptr. 192; *Friends of "B" Street v. City of Hayward, supra,* 106 Cal.App.3d at p. 994, 165 Cal.Rptr. 514; but see *Starbird v. County of San Benito* (1981) 122 Cal.App.3d 657, 665, 176 Cal.Rptr. 149.) "[R]eviewing courts are *not* in **910 a position to decide the question [of propriety of attorney fees] in the first instance,' " the trial court is best suited for this task. (*Brennan v. Board of Supervisors, supra,* 153 Cal.App.3d at p. 197, 200 Cal.Rptr. 192, quoting *Woodland Hills Residents Assn., Inc. v. City Council, supra,* 23 Cal.3d at p. 941, 154 Cal.Rptr. 503, 593 P.2d 200.)

DISPOSITION

The judgment is reversed with directions to the superior court to issue a peremptory writ of mandate directing respondent to set aside its orders of December 6, 1983 and March 6, 1984, adopting the negative declarations and related approvals. We also direct the superior court to grant any further relief that should prove appropriate, including the determination of and award of attorneys' fees.

McDANIEL and RICKLES, JJ., concur.
Cal.App. 4 Dist.,1985.
Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo
172 Cal.App.3d 151, 217 Cal.Rptr. 893

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GUY HALL, Respondent,
v.
THE CITY OF TAFT et al., Appellants.
L. A. No. 24244.

Supreme Court of California
Oct. 19, 1956.

HEADNOTES

(1) Schools § 2--Legislative Control.
The public schools are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution, and the Legislature is given plenary powers in relation thereto, subject only to constitutional restrictions.
See **Cal.Jur.**, Schools, § 4 et seq.; **Am.Jur.**, Schools, § 7 et seq.
(2) Schools § 2--Legislative Control.
The public school system is of statewide supervision and concern, and legislative enactments thereon control over attempted regulation by local government units.

(3) Schools § 10--School Districts.
School districts are agencies of the state for local operation of the state school system.

(4) Schools § 52--School Property.
The beneficial ownership of property of public schools is in the state.

(5) Schools § 60--School Property--Buildings and Construction.
While a large degree of autonomy is granted school districts by the Legislature, no statute or constitutional provision expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures built and maintained by the state generally for its use.
See **Cal.Jur.**, Schools, § 70 et seq.; **Am.Jur.**, Schools, § 71 et seq.
(6) Municipal Corporations § 237--Local Regulations--Conflicts With Statute.
When the state engages in such sovereign activities as construction and maintenance of its buildings as differentiated from enacting laws for conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation; neither Const., art. XI, § 11, relating to police power of cities and other local subdivisions, nor Gov. Code, §§ 38601, 38660, empowering a city to regulate the construction of buildings within its limits, should be considered as conferring such powers on local government agencies.
See **Cal.Jur.2d**, Buildings, § 6; **Am.Jur.**, Municipal Corporations, § 287.
(7) Schools § 60--School Property--Buildings and Construction.
Construction of school buildings by school districts is not subject to building regulations of a municipal corporation in which the building is constructed, because the state has completely occupied the field by general laws and such regulations conflict with such laws.

(8) Municipal Corporations § 237--Local Regulations--Conflicts With Statute.
A city may not enact ordinances which conflict with general laws on statewide matters.

(9) Schools § 60--School Property--Buildings and Construction.
The Health and Safety Code provisions relating to structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes (§§ 19150, 19151) and requiring that building permits be obtained from the proper city or county officers (§ 19120) do not limit or modify the provisions of the Education Code (§§ 5021, 5041, 18001 et seq.) which set forth a complete system for the construction of school buildings.

(10) Schools § 60--School Property--Buildings and Construction.
Rules and regulations adopted for the construction of school buildings under the Education and Health and Safety Codes (Cal. Administrative Code, tit. 21, ch. 1) may not be interpreted to mean that a city's building regulations must be met in the construction of a school

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building; they tend more to indicate that school districts could follow such regulations as well as those of the state but are not bound to do so.

(11) Statutes § 112(1)--Construction.
The final construction of a statute is the function of courts.

SUMMARY

APPEAL from a judgment of the Superior Court of Kern County. William L. Bradshaw, Judge. Affirmed.

Action to enjoin a city from enforcing its building ordinance. Judgment for plaintiff affirmed.

COUNSEL

Henry G. Baron, City Attorney, and Allen Grimes for Appellants.

Mack, Bianco, King & Eyherabide and Dominic Bianco for Respondent.

Edmund G. Brown, Attorney General, Richard H. Perry, Deputy Attorney General, Johnson & Stanton, Gardiner Johnson and Thomas E. Stanton, Jr., as Amici Curiae on behalf of Respondent. ***179**

CARTER, J.

Defendants, Taft, a nonchartered city of the sixth class, its council and chief of police, appeal from a judgment enjoining it from enforcing against plaintiff, a building contractor, its building ordinance.

There is no dispute as to the facts. On April 22, 1955, plaintiff as contractor entered into a contract with Taft Union High School and Junior College District, hereafter called district, a school district duly organized under the state laws, to construct in Taft for the district, a school building for $614,113. The plans and specifications for the building were approved by the State Department of Education and State Division of Architecture. Plaintiff commenced construction which was to be completed in 320 days, but work was "stopped" by Taft, the city, demanding that plaintiff obtain a building permit from it involving a $300 fee and submission to the building ordinance [FN*] of Taft. The district has employed an inspector to assure that the building is constructed according to the plans and specifications. Defendants assert that plaintiff has refused to obtain a permit from the city for the construction of the building and they intend to enforce the penal and civil provisions of the building ordinance of the city.

> FN* Taft by ordinance had adopted the "Uniform Building Code 1952 edition adopted and published by the Pacific Coast Officials Conference in 1952."

The issue is whether a municipal corporation's building regulations are applicable to the construction of a public school building by a school district in the municipality. Taft argues that it had power to adopt police regulations-building construction regulations under the Constitution. [FN†]

> FN† "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." (Cal. Const., art. XI, § 11.)

(1) The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto. The Legislature shall not pass local or special laws "Providing for the management of common schools." (Cal. Const., art. IV, § 25, subd. 27.) "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, *the Legislature* shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Emphasis added; *id.*, art. IX, § 1.) There ***180** is a State Board of Education, an elected superintendent of public instruction and there are county superintendents whose salary and qualifications are prescribed by the Legislature (*id.*, art. IX, §§ 3, 3.1, 7). The proceeds of all public lands that have been or may be granted by the United States to the state and other property is "inviolably" appropriated to the support of the common schools (*id.*, art. IX, § 4)

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and "Out of the revenue from state taxes for which provision is made in this article, together with all other state revenues, there shall first be set apart the moneys to be applied by the State to the support of the Public School System and the State University." (*Id.*, art. XIII, § 15.) "The *Legislature* shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (Emphasis added; *id.*, art. IX, § 5.) "The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System *or placed under the jurisdiction of any authority* other than one included within the Public School System. ...

"The Legislature shall provide for the levying annually by the governing body of each county, and city and county, of such school district taxes, at rates not in excess of the maximum rates of school district tax fixed or authorized by the Legislature, as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law." (Emphasis added; *id.*, art. IX, § 6.) A school district may lie in more than one county and may issue bonds. (*Id.*, art. IX, § 6 1/2.) No money shall ever be appropriated for "any school not under the exclusive control of the officers of the public schools. ..." (*Id.*, art. IX, § 8.) "The *Legislature* shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts." (Emphasis added; *id.*, art. IX, § 14.) In harmony with those provisions it has been held that the power of the state Legislature over ***181** the public schools is plenary, subject only to any constitutional restrictions. (*Pass School Dist. v. Hollywood City School Dist.*, 156 Cal. 416, 418 [105 P. 122, 20 Ann.Cas. 87, 26 L.R.A.N.S. 485]; *Kennedy v. Miller*, 97 Cal. 429 [32 P. 558]; *Worthington School Dist. v. Eureka School Dist.*, 173 Cal. 154 [159 P. 437]; *Merrill etc. School Dist. v. Rapose*, 125 Cal.App.2d 819 [271 P.2d 522]; see *Woodcock v. Dick*, 36 Cal.2d 146 [222 P.2d 667]; *Seidel v. Waring*, 36 Cal.2d 149 [222 P.2d 669].) (2) The public school system is of statewide supervision and concern and legislative enactments thereon control over attempted regulation by local government units. (*Esberg v. Badaracco*, 202 Cal. 110 [259 P. 730]; *Cloverdale Union H. S. Dist. v. Peters*, 88 Cal.App. 731 [264 P. 273]; *Piper v. Big Pine School Dist.*, 193 Cal. 664 [226 P. 926]; *Kelso v. Board of Education*, 42 Cal.App.2d 415 [109 P.2d 29]; *Kennedy v. Miller, supra*, 97 Cal. 429; *Worthington School Dist. v. Eureka School Dist., supra*, 173 Cal. 154; *Board of Education v. Davidson*, 190 Cal. 162 [210 P. 961]; *Phelps v. Prussia*, 60 Cal.App.2d 732 [141 P.2d 440]; *Lansing v. Board of Education*, 7 Cal.App.2d 211 [45 P.2d 1021]; *People v. Mertz*, 2 Cal.2d 136 [39 P.2d 422]; *Gerth v. Dominguez*, 1 Cal.2d 239 [34 P.2d 135].) It is said in *Piper v. Big Pine School Dist., supra*, 193 Cal. 664, 669: "It [the education of the children of the state] is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state." (3) School districts are agencies of the state for the local operation of the state school system. (*Cloverdale Union H. S. Dist. v. Peters, supra*, 88 Cal.App. 731, 738; *Board of Education v. Davidson, supra*, 190 Cal. 162, 168; *Butler v. Compton Junior College Dist.*, 77 Cal.App.2d 719 [176 P.2d 417]; *Lansing v. Board of Education, supra*, 7 Cal.App.2d 211; *Merrill etc. School Dist. v. Rapose, supra*, 125 Cal.App.2d 819.) (4) The beneficial ownership of property of the public schools is in the state. It is said in *Pass School Dist. v. Hollywood City School Dist., supra*, 156 Cal. 416, 419: "To the contention that a transfer of ownership thus accomplished works the taking of property without due process of law, it should be sufficient ***182** to point out that in all such cases the beneficial owner of the fee [of public school property] is the state itself, and that its agencies and mandatories-the various public and municipal corporations in whom the title rests - are essentially nothing but trustees of the state, holding the property and devoting it to the uses which the state itself directs. The transfer of title

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without due process of law, of which appellant so bitterly complains, is nothing more, in effect, than the naming by the state of other trustees to manage property which it owns and to manage the property for the same identical uses and purposes to which it was formerly devoted. In point of law, then, the beneficial title to the estate is not affected at all. All that is done is to transfer the legal title under the same trust from one trustee to another. In this sense the trustees of the Hollywood City School District became, by operation of law, successors to the trustees of the Pass School District, as is directly held in *Allen v. School Town of Macey*, 109 Ind. 559 [10 N.E. 578], where it is said: 'It is now a well-recognized legal inference deducible as well from general principles as from the decided cases, that under the constitution and laws of this state, public school property is held in trust for school purposes by the persons or corporations authorized for the time being to control such property, and that it is in the power of the legislature to provide for a change in the trusteeship of such property in certain contingencies presumably requiring such a change, or, indeed, to change the trustees of that class of property whenever it may choose to do so.'

"Even if such well-established principles could be set aside under the plea that they work injustice in the individual case, this plea here presented is without merit. The state is profoundly interested in the education of its young, but has no deep concern over the personality of the trustees who shall administer this trust, so long as the administration is in the orderly form of law." (See *Fawcett v. Ball*, 80 Cal.App. 131, 136 [251 P. 679]; *Butler v. Compton Junior College Dist.*, 77 Cal.App.2d 719 [176 P.2d 417]; *Kennedy v. Miller*, 97 Cal. 429 [32 P. 558]; *Gridley School Dist. v. Stout*, 134 Cal. 592 [66 P. 785].) (5) While a large degree of autonomy is granted to school districts by the Legislature, we are referred to no statute or constitutional provision which, as far as the question here involved is concerned, expressly makes school buildings or their construction any more amenable to regulation by a municipal corporation than structures which are ***183** built and maintained by the state generally for its use. (6) When it engages in such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation. Section 11 of article XI of the state Constitution, *supra,* should not be considered as conferring such powers on local government agencies. Nor should the Government Code sections which confer on a city the power to regulate the construction of buildings within its limits (see Gov. Code, §§ 38601, 38660) be so considered. It is said in *In re Means*, 14 Cal.2d 254, 258 [93 P.2d 105], holding that a state employee working on a state structure in a city need not meet the requirements of a city charter provision: "If one who has been employed by the state may not work on state property within a municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty. ...

"Turning to the contentions of the respondent that the regulation of plumbing is a municipal affair, the rule to be applied is not entirely a geographical one. Under certain circumstances, an act relating to property within a city may be of such general concern that local regulation concerning municipal affairs is inapplicable. ... For example, where one of the city's streets has been declared by an act of the legislature to be a secondary highway, the improvement of that street is not a municipal affair within the meaning of the Constitution. ... Also, regulations prescribed by charter or ordinance of a city requiring that the work of altering and improving buildings be subject to local supervision have been held inapplicable to state building. (*City of Milwaukee v. McGregor*, 140 Wis. 35 [121 N.W. 642, 17 Ann.Cas. 1002].)

"In the case of *Kentucky Institution for Education of Blind v. City of Louisville*, 123 Ky. 767 [97 S.W. 402, 8 L.R.A.N.S. 553], the city attempted to enforce an ordinance relating to fire escapes with respect to a state institution for the blind. The court held the ordinance inapplicable, stating: 'The principle is that the state, when creating municipal governments does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control. ***184** The municipal government is but an agent of the state, not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state. It is

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competent for the state to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have.' " (See also *Board of Education v. City of St. Louis*, 267 Mo. 356 [184 S.W. 975]; *Salt Lake City v. Board of Education*, 52 Utah 540 [175 P. 654]; 31 A.L.R. 450.)

Pasadena School Dist. v. Pasadena, 166 Cal. 7 [134 P. 985, Ann.Cas. 1915B 1039, 47 L.R.A.N.S. 892], fails to consider the factors above mentioned and insofar as it is inconsistent with this opinion it is overruled. The question here considered was not involved in *Roman Catholic etc. Corp. v. City of Piedmont*, 45 Cal.2d 325, 332-333 [289 P.2d 438].

(7) Moreover, in connection with the foregoing and as an additional ground why the construction of school buildings by school districts are not subject to the building regulations of a municipal corporation in which the building is constructed, is that the state has completely occupied the field by general laws, and such local regulations conflict with such general laws, when we consider the activity involved. (8) A city may not enact ordinances which conflict with general laws on statewide matters. (*Simpson v. City of Los Angeles*, 40 Cal.2d 271 [253 P.2d 464]; *Pulcifer v. County of Alameda*, 29 Cal.2d 258 [175 P.2d 1]; *Ex parte Daniels*, 183 Cal. 636 [192 P. 442, 21 A.L.R. 1172]; *Atlas Mixed Mortar Co. v. City of Burbank*, 202 Cal. 660 [262 P. 334]; *Ganley v. Claeys*, 2 Cal.2d 266 [40 P.2d 817]; *In re Murphy*, 190 Cal. 286 [212 P. 30]; *In re Mingo*, 190 Cal. 769 [214 P. 850]; *Natural Milk etc. Assn. v. City etc. of San Francisco*, 20 Cal.2d 101 [124 P.2d 25]; *Pipoly v. Benson*, 20 Cal.2d 366 [125 P.2d 482, 147 A.L.R. 515]; *Tolman v. Underhill*, 39 Cal.2d 708 [249 P.2d 280].) The particular situation presented and discussed in those cases is not helpful. *In re Means, supra*, 14 Cal.2d 254, herein discussed is most pertinent as it involves the attempted regulation of a state activity by a city, as distinguished from regulations of the members of the public.

The Education Code sets out a complete system for the construction of school buildings. The Legislature there declares ***185** that it is in the interest of the state to aid school districts in the construction of school buildings for the maintenance of the public school system inasmuch as the system is of general concern and the education of the children is an obligation and function of the state. (Ed. Code, §§ 5021, 5041.) The governing board of any school district shall manage and control the school property within its district (*id.*, § 18001). It (the board) shall furnish and repair the school property. (*Id.*, § 18002.) It shall provide as a part of school buildings patent flush water closets for the use of the pupils (*id.*, § 18009). It may repair old buildings by day's labor or by force account (*id.*, §§ 18055, 18057). The State Department of Education shall: "Establish standards for school buildings," review and approve all plans and specifications for buildings and disapprove those not meeting the standards, furnish plans, specifications and "building codes," and make rules and regulations to carry out those activities (*id.*, §§ 18102, 18101). "The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse (*id.*, § 18151). Except in cities having a board of education the county superintendent shall pass upon all plans for school buildings and plans shall be submitted to him. "The Division of Architecture of the Department of Public Works under the police power of the State shall supervise the construction of any school building or, if the estimated cost exceed four thousand dollars ($4,000), the reconstruction or alteration of or addition to any school building, for the protection of life and property." (*Id.*, § 18191.) " 'Construction or alteration' as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building." (*Id.*, § 18193.) "The Division of Architecture shall pass upon and approve or reject all plans for the construction or alteration of any school building. To enable it to do so, the governing board of each school district and any other school authority before adopting any plans for a school building shall submit the plans to the Division of Architecture for approval, and shall pay the fees prescribed in this article." (*Id.*, § 18194.) "Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Division of Architecture, shall be first had and obtained." (*Id.*, § 18195.) "In each case the application for approval of the plans shall be ***186** accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and es-

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timates of cost, which shall comply in every respect with any and all requirements prescribed by the Division of Architecture. " (*Id.*, § 18196.) All plans and specifications shall be prepared by a duly state licensed architect or engineer and the supervision of the work shall be by a duly licensed person. (*Id.*, § 18199.) No contract for construction is valid and no public money shall be paid for any work or materials furnished thereunder " unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Division of Architecture and unless the approval thereof in writing has first been had and obtained from the division." (*Id.*, § 18200.) Progress reports must be made to the division (*id.*, § 18201). "The State Division of Architecture shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, *and the public.* The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Division of Architecture. The inspector shall act under the direction of and be responsible to the architect or structural engineer." (Emphasis added; *id.*, § 18203.) The division may adopt rules and regulations to carry out its duties and a violation of the provisions is a felony (*id.*, §§ 18202, 18204). If the supervisor of health of any school district notes any defect in "plumbing, lighting, or heating," he shall report to the district and if it does not act, to the county superintendent. (*Id.*, § 18221.) Each building, if two or more stories, shall have fire escapes (*id.*, § 18222).

(9) It is urged, however, that the foregoing provisions must be read in the background in which they were adopted, that is, that some of them were placed in the Education Code from the Field Act adopted in 1933 (Stats. 1933, ch. 59) and must be construed with the Riley Act of 1933 (Stats. 1933, ch. 601) now in the Health and Safety Code, sections 19100- 19170. The Riley Act provides that all buildings (with certain exceptions Health & Saf. Code, § 19100) must meet certain standards which are set forth (*id.*, §§ 19150, 19151). ***187** Building permits must be obtained from the proper city or county officers charged with the enforcement of laws regulating construction (*id.*, § 19120). Any city or county may establish construction standards higher than those established by sections 19150 and 19151 of the Health and Safety Code. Plans and specifications for buildings shall be filed with the application for a building permit (*id.*, § 19132). Both the Field and Riley acts were enacted as urgency measures, the urgency being stated to be the series of earthquakes occurring shortly prior thereto (Stats. 1933, ch. 59, § 9; 1933, ch. 601, § 8.) We do not believe, however, that the Health and Safety Code provisions (Riley Act) limit or modify the provisions of the Education Code (Field Act) above discussed. The former deal with structural design aimed at procuring buildings less dangerous from the standpoint of earthquakes (Health & Saf. Code, §§ 19150, 19151) while the latter, as above pointed out, are broad and comprehensive including the whole field of construction regulations. The urgency that impelled the Legislature to enact both as urgency measures may have been the same but the scope is clearly different. Hence the provisions in the former providing for more stringent local regulations are not applicable to the latter.

Reference is made to rules and regulations, past and present, adopted for the construction of school buildings under the Education and Health and Safety Codes. (Cal. Administrative Code, tit. 21, Public Works, Division of Architecture, chap. 1, subchap. 1.) The purpose of the rules (we refer to the rules now in existence) is to protect lives and property of the people by regulating the design and construction of public school buildings so that, in addition to the normal loads to which such buildings are subjected, they shall resist future earthquakes. (Tit. 21, subchap. 1, group 1, art. I, § 1.) The rules are intended to establish "reasonable standards and minimum requirements " for the construction of such buildings in order to attain the requisite stability to withstand loads and forces "and to insure safety of construction " (*id.*, § 2). The detailed regulations set forth in sections 101 to 1206 have been adopted as a basis for the approval of plans and specifications. "It is not the intention to limit the ingenuity of the designer nor to interfere with existing building rules and regulations where such rules and regulations are more stringent. Where the designer

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desires to depart from the methods of analysis set up by these rules and regulations, it will be necessary that he submit his method in detail ***188** together with complete information including computations and test data covering the design in question. Permission to deviate from these rules and regulations is optional with the Division of Architecture and is dependent upon the division being satisfied that the structural members or portions of the building involved would provide at least such safety as would have been obtained had these rules and regulations been adhered to strictly." (*Id.*, § 70.) "Regulations and design values established in these rules and regulations are minimum requirements. Nothing herein contained shall be interpreted to interfere with or to waive the requirements of applicable local or state building laws or ordinances where the requirements of those laws are more stringent than the requirements of these rules and regulations." (*Id.*, § 115.) However, it is also provided that: "No rule or regulation shall be construed to deprive the Division of Architecture of its right to exercise the powers conferred upon it by law, or to limit the division in such enforcement of the act as is necessary to secure safety of construction and the proper administration of the law." (*Id.*, § 5.)

(10) It is very doubtful that those rules indicate an intention to interpret the Education Code sections to mean that a city's building regulations must be met in the construction of a school building. They tend more to indicate that the school districts could follow such regulations as well as those of the state but are not bound to do so. (11) In any event, since the final construction of a statute is the function of the courts (2 Cal.Jur.2d, Administrative Law, § 17), we hold the statutes here involved should not be construed as requiring a school district to comply with the building regulations of a city.

There is no necessity for comparing in detail Taft's building code and the numerous comprehensive building regulations contained in the Education Code and the rules and regulations of the Division of Architecture, for as we have seen the state has occupied the field. As said in *In re Means, supra*, 14 Cal.2d 254, 258, 260, in speaking of the effect of a city ordinance, establishing standards for plumbers, on a state employee in a city, the state civil service system provides a comprehensive plan for the selection of state employees and although the city ordinance does not purport to prescribe the conditions for state employment, "If one who has been employed by the state may not work on state property within a ***189** municipality without the consent of the municipality obtained after examination, the city has, in effect, *added to the requirements for employment by the state, and restricted the rights of sovereignty.* ...

"Although the legislature has enacted no statute regulating plumbing, if the city's ordinance is a valid exercise of power, then one whom the state has examined and found eligible for employment as a plumber and who has later entered the state civil service may be unable to work on state property because he cannot pass the examination of a city health officer or licensing board. The result is a direct conflict of authority. Either the local regulation is ineffective or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must be resolved in favor of the state." (Emphasis added.) The same comments apply to the references in the instant construction contract and specifications that the building is to be constructed in compliance with local regulations.

The judgment is affirmed.

Gibson, C. J., Shenk, J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.

Cal.
Hall v. City of Taft
47 Cal.2d 177, 302 P.2d 574

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Supreme Court of California,
In Bank.
NO OIL, INC., et al., Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES et al., Defendants and Respondents.
L.A. 30268.

Dec. 10, 1974.
As Modified on Denial of Rehearing Jan. 29, 1975.

Nonprofit corporations brought an action in mandamus challenging the validity of the creation by ordinance by the council of the City of Los Angeles of three informational oil drilling districts within the Pacific Palisades, subject to condition that only two test wells be drilled, without first requiring the preparation and consideration of an environmental impact report. The Superior Court, Los Angeles County, David N. Eagleson, J., entered judgment in favor of defendants, and plaintiffs appealed. The Supreme Court, Tobriner, J., held that city council in approving oil drilling project in October of 1972 without a written determination concerning environmental impact of that project failed to comply with requirements of Environmental Quality Act that agency render a written determination whether project requires an environmental impact report before it gives final approval to project, and belated council resolution in January of 1973, despite its attempt to render determination retroactively, did not suffice to comply with requirement that environmental issues be considered and resolved before project is approved; and that city's use of erroneous test which limited use of an environmental impact report to projects which may have an 'important' or 'momentous' effect of 'semi-permanent' duration constituted prejudicial abuse of discretion.

Judgment reversed and cause remanded.

Clark, J., dissented and filed an opinion in which McComb and Burke, JJ., concurred.

Opinion, Cal.App., 111 Cal.Rptr. 487, vacated.

West Headnotes

[1] Environmental Law 149E 16

149E Environmental Law
149EI In General
149Ek14 Administrative Agencies and Proceedings in General
149Ek16 k. Regulations and Rulemaking in General. Most Cited Cases
(Formerly 199k25.5(1), 199k25.5 Health and Environment)
Guidelines established by State Resources Agency, which took effect on February 10, 1973, were not applied retroactively to decisions of court or city council rendered before guidelines went into effect, but court made use of guidelines as a suggested interpretation of Environmental Quality Act and as an illustration of procedures which Resource Agency finds necessary to enforcement of statute. West's Ann.Public Resources Code, §§ 21001(d), 21050 et seq., 21084, 21085.

[2] Mandamus 250 66

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k66 k. Municipalities and Municipal Officers in General. Most Cited Cases
Since Los Angeles City Council was not required by law to hold an evidentiary hearing before approving ordinances establishing oil drilling districts, decision of council that an environmental impact report was not required was reviewable by traditional mandamus action. West's Ann.Public Resources Code, §§ 21100, 21151, 21168, 21168.5, 21168.7; West's Ann.Code Civ.Proc. § 1094.5.

[3] Environmental Law 149E 689

149E Environmental Law

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149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
(Formerly 199k25.15(1), 199k25.5 Health and Environment)
Statutes governing judicial review of agency action under Environmental Quality Act apply to all proceedings under Act, including those pending when judicial review sections became effective. West's Ann.Public Resources Code, §§ 21168, 21168.5, 21168.7; West's Ann.Code Civ.Proc. § 1094.5.

[4] Environmental Law 149E 588

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek588 k. Impacting Human Environment. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)

Environmental Law 149E 589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in General. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)
Environmental Quality Act requires the preparation of an environmental impact report whenever it can be fairly argued on basis of substantial evidence that project may have significant environmental impact. West's Ann.Public Resources Code, §§ 21001(d), 21050 et seq., 21084, 21085.

[5] Mandamus 250 172

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k172 k. Scope of Inquiry and Powers of Court. Most Cited Cases
In action for administrative mandamus, court reviews administrative record, receiving additional evidence only if that evidence was unavailable at time of administrative hearing, or improperly excluded from record. West's Ann.Code Civ.Proc. § 1094.5.

[6] Mandamus 250 172

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k172 k. Scope of Inquiry and Powers of Court. Most Cited Cases
In a traditional mandamus action, court is not limited to review of administrative record, but may receive additional evidence. West's Ann.Code Civ.Proc. § 1094.5.

[7] Environmental Law 149E 609

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek607 Effect of Deficiency
149Ek609 k. Lack of Statement. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)
Under Environmental Quality Act, an environmental impact report is required before agency approves project. West's Ann.Public Resources Code, § 21050 et seq.

[8] Environmental Law 149E 594

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek594 k. Negative Declaration; Statement of Reasons. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10 Health and Environment)
Determination that a project does not require an environmental impact report, when that project is not exempt from environmental study under Environmental Quality Act or guidelines, must take form of a

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written Negative Declaration. West's Ann.Public Resources Code, § 21050 et seq.

[9] Environmental Law 149E ⚿608

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek607 Effect of Deficiency
149Ek608 k. In General. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10 Health and Environment)
City council in approving oil drilling project in October of 1972 without a written determination concerning environmental impact of that project failed to comply with requirements of Environmental Quality Act that agency render a written determination whether project requires an environmental impact report before it gives final approval to project, and belated council resolution in January of 1973, despite its attempt to render determination retroactively, did not suffice to comply with requirement that environmental issues be considered and resolved before project is approved. West's Ann.Public Resources Code, §§ 21001(d), 21084, 21085, 21100, 21151, 21168.5.

[10] Environmental Law 149E ⚿589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in General. Most Cited Cases
(Formerly 199k25.10(3), 199k25.10 Health and Environment)
Word "significant," within Environmental Quality Act requirement of an environmental impact report only for project whose environmental effect can be described as "significant" is not a term of precision but encompasses a range of meaning. West's Ann.Public Resources Code, §§ 21065, 21151.

[11] Environmental Law 149E ⚿585

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek585 k. In General. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)
Environmental Quality Act imposes a low threshold requirement for preparation of an environmental impact report. West's Ann.Public Resources Code, § 21151.

[12] Environmental Law 149E ⚿595(5)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(5) k. Mining; Oil and Gas. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)
With respect to oil drilling project, test used by city which limited use of an environmental impact report to projects which may have an "important" or "momentous" effect of "semi-permanent" duration was erroneous. West's Ann.Public Resources Code, § 21151.

[13] Environmental Law 149E ⚿589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in General. Most Cited Cases
(Formerly 199k25.10(3), 199k25.10 Health and Environment)
An agency should prepare an environmental impact report when it perceives some substantial evidence that a project may have a significant effect environmentally. West's Ann.Public Resources Code, § 21050 et seq.

[14] Environmental Law 149E ⚿588

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149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek588 k. Impacting Human Environment. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10 Health and Environment)
An environmental impact report should be prepared whenever the action arguably will have an adverse environmental impact. West's Ann.Public Resources Code, § 21050 et seq.

[15] Environmental Law 149E 593

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek593 k. Controversy. Most Cited Cases
(Formerly 199k25.10(2.1), 199k25.10(2), 199k25.10, 199k10 Health and Environment)
The existence of serious public controversy concerning environmental effect of a project in itself indicates that preparation of an environmental impact report is desirable. West's Ann.Public Resources Code, §§ 21050 et seq., 21151.

[16] Statutes 361 226

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k226 k. Construction of Statutes Adopted from Other States or Countries. Most Cited Cases
Since California Environmental Quality Act was modeled on federal statute, judicial and administrative interpretation of federal enactment is persuasive authority in interpreting California act. West's Ann.Public Resources Code, § 21050 et seq.

[17] Environmental Law 149E 594

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek594 k. Negative Declaration; Statement of Reasons. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10 Health and Environment)
A simple resolution or Negative Declaration, stating that project will have no significant environmental effect, cannot serve function of environmental impact report. West's Ann.Public Resources Code, §§ 21050 et seq., 21151.

[18] Environmental Law 149E 606

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek606 k. Effect of Statement or Other Requirements. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10 Health and Environment)
Fact that resolution of city council carried by a bare eight to seven majority compelled conclusion that, with respect to oil drilling project, city's use of erroneous test which limited use of an environmental impact report to projects which may have an important or momentous effect of semipermanent duration, and which excluded presence of disputed factual issues of public controversy as criteria suggesting preparation of a report, constituted prejudicial abuse of discretion. West's Ann.Public Resources Code, § 21050 et seq.

[19] Administrative Law and Procedure 15A 821

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(F) Determination
15Ak821 k. Successive Proceedings for Review. Most Cited Cases
When a court remands case to an administrative agency with directions to follow a specific legal test, court must presume that administrators faithfully followed those instructions, but the presumption is rebuttable. West's Ann.Evid.Code, §§ 660, 664.

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[20] Environmental Law 149E ⚷577

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek577 k. Duty of Government Bodies to Consider Environment in General. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10 Health and Environment)
Declarations of city councilmen filed prior to trial court's statement, on remand, of its test for determination of environmental impact of project fell short of showing that council subsequently failed to follow court's test. West's Ann.Public Resources Code, § 21050 et seq.

[21] Environmental Law 149E ⚷585

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek585 k. In General. Most Cited Cases
(Formerly 199k25.10(5), 199k25.10, 199k10 Health and Environment)
City council's use of an erroneous legal standard for determination of necessity of environmental impact report constituted a failure to proceed in manner required by law and constituted an abuse of discretion. West's Ann.Public Resources Code, § 21168.5.
***73 ***37 **69** Brent N. Rushforth, Carlyle W. Hall, Jr., Mary D. Nichols, John R. Phillips, A. Thomas Hunt and Fredric P. Sutherland, Los Angeles, for plaintiffs and appellants.

Evelle J. Younger, Atty. Gen., Robert H. O'Brien, Asst. Atty. Gen., Nicholas C. Yost and Jan E. Chatten, Deputy Attys. Gen., as amici curiae on behalf of plaintiffs and appellants.

Lawler, Felix & Hall, Robert Henigson, William K. Dial, Hanna & Morton, Harold C. Morton, Edward S. Renwick, Bela G. Lugosi, Mitchell, Silberberg & Knupp and Arthur Groman, Los Angeles, for defendants and respondents.

Hindin, McKay, Levine & Glick and Denies A. Glick, Beverly Hills, as amici curiae on behalf of defendants and respondents.

TOBRINER, Justice.

Plaintiffs appeal from a judgment of the Los Angeles Superior Court ruling that the City of Los Angeles need not prepare an environmental impact report (EIR) before enacting ordinances to permit defendant Occidental Petroleum Corp. to sink two test oil wells in the Pacific Palisades region of the city. This appeal, the first case arising under the California Environmental Quality Act (hereafter CEQA) (Pub. Resources Code, s 21050 et seq.) to reach this court since Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 104 Cal.Rptr. 761, 502 P.2d 1049 compels us to inquire into how an agency should decide whether a pending project requires an EIR.[FN1]

FN1. For a summary of the relationship between CEQA as enacted in 1970, Friends of Mammoth, and the 1972 amended act, see Seneker, The Legislative Response to Friends of Mammoth-Developers Chase the Will-O-The Wisp (1973) 48 State Bar J. 127.

***74** [1] In CEQA, the Legislature sought to protect the environment by the establishment of administrative procedures drafted to 'Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.' (Pub. Resources Code, s 21001, subd. (d).) To achieve these objectives, CEQA and the guidelines issued by the State Resources Agency to implement CEQA[FN2] establish a three-tiered structure. If a project falls within a category exempt by administrative regulation (see Pub.Resources Code, ss 21084, 21085), or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment' (Cal.Admin.Code, tit. 14, s 15060), no further agency evaluation is required. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study (Cal.Admin.Code, tit. 14, s 15080); if that study demonstrates that the project 'will not have a significant effect,' the agency may so declare in a brief Negative Declaration. (Cal.Admin.Code, tit. 14, s 15083.) If the project is one 'which may have a significant effect on the environment,' an EIR is required. (Pub. Resources Code, ss 21100, 21151; see Cal.Admin.Code, tit. 14, s

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15080.) The parties assume that the drilling project is one which may possibly have a significant effect and thus requires an initial threshold environmental study. The question is whether the city properly determined that no EIR was necessary.

> FN2. The guidelines established by the State Resources Agency took effect on February 10, 1973, shortly after completion of the trial in the present case. We do not apply these guidelines retroactively to decisions of the court or city council rendered before the guidelines went into effect. We make use of the guidelines, however, as a suggested interpretation of the statute, and as an illustration of the procedures which the resources agency finds necessary to enforcement of the statute.

[2][3] Judicial review of the city's decision is governed by Public Resources Code ***38 **70 section 21168.5, which provides that 'In any action or proceeding, other than an action or proceeding under section 21168, to attack, review, set aside, void or annul a determination or decision of a public agency on the ground of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'[FN3] Since, as we shall explain, the judgment *75 of the superior court sustaining the city's decision must be reversed because of the city's failure to proceed in the manner required by law, we do not reach the question whether that decision is supported by substantial evidence.

> FN3. Judicial review of agency action under CEQA is governed by sections 21168 and 21168.5. Section 21168 provides that review of an agency decision 'made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency' should follow the administrative mandamus procedure of Code of Civil Procedure section 1094.5. Section 21168.5, quoted in the text, provides that other agency decisions should be reviewed by a traditional mandamus action. Since the Los Angeles City Council was not required by law to hold an evidentiary hearing before approving the ordinances establishing the oil drilling districts, section 21168.5 governs the case at bar.
>
> Sections 21168 and 21168.5 became effective on December 5, 1972-subsequent to the October city council hearings and to the filing of this action, but before the trial in the superior court and that court's remand of the matter to the city council. Fortunately the Legislature, anticipating that issues might arise concerning the retroactivity of these sections, enacted that 'Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.' (Pub. Resources Code, s 21168.7.) This enactment demonstrates that the Legislature intends section 21168 and 2168.5 to apply to all proceedings under CEQA, including those pending when those sections became effective.

The city council specifically failed to comply with the requirements of CEQA in two respects. First, because an EIR serves to guide an agency in deciding whether to approve or disapprove a proposed project, CEQA impliedly requires (and the guidelines expressly require) that the agency render a written determination whether a project requires an EIR before it gives final approval to that project. The city council, however, approved the drilling project in October of 1972 without a written determination concerning the environmental impact of that project. The belated council resolution in January of 1973, despite its attempt to render a determination retroactively as of the previous October, does not suffice to comply with the requirement that environmental issues be considered and resolved before a project is approved.

[4] Second, since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project

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may have significant environmental impact. The superior court in the present case, however, ordered the city council to follow a far more restrictive test that limited use of an EIR to projects which may have an 'important' or 'momentous' effect of semi-permanent duration. The superior court's instruction, in addition, overlooked the importance of preparing an EIR in cases, such as the present action, in which the determination of a project's environmental effect turns upon the resolution of controverted issues of fact and forms the subject of intense public concern. In the context of this case, we shall point out the bases for our conclusion that the city's use of the erroneous test stated by the trial court constitutes a prejudicial abuse of discretion.

*76 1. Chronology of events.

In 1966 Occidental Petroleum drilled the Marquez Core Hole in Santa Monica Canyon and discovered oil producing sands at a depth of 9,200 feet. Seeking to determine the extent of the oil field, Occidental ***39 **71 acquired the 'highway drillsite' in Pacific Palisades in 1969. This two-acre site lies across a state highway from Will Rogers State Beach and near the foot of a bluff which has experienced numerous landslides.

In July of 1970, the Office of Zoning Administration of the City of Los Angeles granted Occidental a conditional use permit allowing it to drill a test well at the highway drillsite. The board of zoning appeals overturned that decision, finding that the drilling might trigger a disastrous landslide, that a blowout-an uncontrolled effusion of oil under pressure-would have severe environmental consequences, and that an industrial use of the site would be aesthetically undesirable.

Seeking to circumvent the requirement for a conditional use permit, Occidental petitioned the city in 1972 to establish three oil drilling districts in the Pacific Palisades. Since the oil drilling districts proposed by Occidental would have permitted commercial oil production, the hearing examiner for the city planning commission, concerned about the environmental impact of such production, recommended disapproval of the proposal. Nevertheless the planning commission resolved to approve the proposal on condition that only two test holes be drilled.

On October 10, 1972, the council considered three ordinances which established oil drilling districts in the Pacific Palisades area, subject to the condition that only two test wells could be drilled. At the close of the hearing Councilman Wachs inquired whether the city attorney had examined the proposed ordinances in the light of our opinion in Friends of Mannoth filed three weeks earlier. The city attorney replied that since the city had not yet established procedures to ascertain the environmental impact of measures coming before the council, he had made no such examination.

At the next meeting, on October 17, Councilman Wachs moved to postpone consideration of the ordinances pending preparation of an EIR. No other councilman discussed the motion, which failed by an eight-to-six vote. The council then passed the ordinances by the same eight-to-six vote. Mayor Yorty signed the ordinances into law on October 20.

Plaintiffs, four nonprofit corporations representing persons opposed to oil drilling in Pacific Palisades, filed the instant action on October 27. Their complaint sought a declaration that the ordinances were invalid, *77 prayed for mandate to compel preparation of an EIR, and requested an injunction against the issuance of a drilling permit by the office of zoning administration.[FN4] The city, in response, contended that no EIR was necessary, supporting this contention with declarations from the eight councilmen who voted for the ordinances; each declared, in the statutory language, his opinion that the drilling project was not such as might have a significant effect on the environment. Occidental, on the other hand, maintained that the reports of the planning commission consititued a sufficient EIR.

FN4. Before beginning to drill, Occidental was required to secure drilling permits from the office of zoning administration. The office expressly found that issuance of the drilling permits would not require an EIR, and issued the requested permits on January 4, 1973. The board of zoning appeals upheld that decision on January 31, and Occidental commenced drilling operations the same day. We issued a stay order halting the drilling on

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February 7.

Plaintiffs initially claimed that the 'project' whose impact was at issue encompassed commercial oil production in Pacific Palisades; they argued that it was evident such production would have a significant effect on the environment. The trial court, however, limited the issue to the impact of the drilling of the test wells.[FN5] Plaintiffs presented expert testimony *78 to ***40 **72 show that even this limited 'project' might have a significant environmental effect. Paul Witherspoon, a professor of petroleum geology at the University of California at Berkeley, explained that a blowout, an unavoidable hazard of exploratory drilling, might lead to oil seepage polluting the adjoining state beach and harbor. George Tauxe, a professor of soil mechanics at U.C.L.A., testified that the drilling site was located at the foot of an unstable bluff, a locale of past landslides. Plaintiffs also contend that the drilling operation would be noisy and visually unattractive.

> FN5. Plaintiffs contend that the trial court erred in limiting the scope of the 'project' at issue to the drilling of two test wells; they maintain that the scope of inquiry should include the environmental effects of commercial production and exploitation of the oil resources of the Pacific Palisades. They point out that the drilling of the test wells would be a useless waste of money unless commercial production can follow. Thus information on the environmental impact of commercial production is relevant to the council's decision to approve the test wells; if that data proved that commercial production would be harmful, the council might well decide to disapprove the test drilling. Under these circumstances, plaintiffs observe that a narrow definition of 'project' which bars inquiry into the environmental effects of commercial production defeats the objectives of the act.
>
> Defendants protest, however, that the geologic information obtained from the test wells is essential to the preparation of an accurate EIR on the impact of commercial production. As the court pointed out in Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Com'n (1973) 156 U.S.App.D.C. 395, 481 F.2d 1079, an impact statement prepared before reliable information is available would 'tend toward uninformative generalties' (481 F.2d at p. 1093), but one delayed until after key decisions have been made could not assure that such decisions reflected environmental consideration. 'Thus we are pulled in two directions. Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever in formation is contained can practically serve as an input into the decision making process.' (481 F.2d at p. 1094.)
>
> The issue thus narrows to the question whether the city, before drilling of the test wells, has sufficient reliable date to permit preparation of a meaningful and accurate report on the impact of commercial production. Unfortunately the parties have not briefed this question thoroughly, and the record contains little evidence pertinent to its resolution. Since we are persuaded by plaintiffs' other contentions to reverse the judgment against them, we need not and do not decide whether the trial court erred in limiting the scope of inquiry to exclude consideration of commercial production.

In rebuttal, Occidental presented testimony by Ted Bear, a consulting petroleum geologist, that absent human or mechanical failure, there was no danger of a blowout at the highway drillsite. Other geologists employed by Occidental described measures planned to contain a blowout. David Leeds, a consulting seismologist, testified that the drilling vibrations perceived at the base of the bluff would be of lesser magnitude than those caused by existing traffic on the highway west of the drillsite, and even less than the ambient vibrations in the vicinity of the courtroom. Occidental also presented photographs to show that a drillsite could be constructed to avoid visual blight.

On December 29, 1972, the judge announced an oral ruling. Declaring that the council's actions of October 10 and 17 were equivocal, he resolved to remand the

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matter to the council for clarification of the council's position on the question: 'Is the present Occidental application to drill two core holes such a project that may have a significant effect on the environment?'

In remanding the matter, the court stated a test for use by the council in determining whether a project 'may have a significant effect on the environment': 'whether there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature.'

The council convened on January 8, 1973. At the conclusion of the hearing the council, by an eight-so-seven vote, adopted a resolution stating that 'the Los Angeles City Council specifically declare that at the time it adopted the subject three ordinances it believed, and now specifically finds, that such ordinances and the restricted activities permitted thereby would have no significant effect on the environment.'

[5][6] The superior court found that the council's adoption of this resolution ***41 **73 was supported by substantial evidence in the administrative *79 record both as of October 1972, and as of January 8, 1973.[FN6] It then entered judgment declaring that the council lawfully determined that no EIR was required for the drilling project, and denying plaintiffs' request for mandate and injunctive relief.

> FN6. In an action for administrative mandamus, the court reviews the administrative record, receiving additional evidence only if that evidence was unavailable at the time of the administrative hearing, or improperly excluded from the record. (Code Civ.Proc., s 1094.5.) In a traditional mandamus action, on the other hand, the court is not limited to review of the administrative record, but may receive additional evidence. (Felt v. Waughop (1924) 193 Cal. 498, 504, 225 P. 862; Lassen v. City of Alameda (1957) 150 Cal.App.2d 44, 48, 309 P.2d 520; Cal.Civil Writs (Cont.Ed.Bar 1970) s 17.9.) Hence the issue before the superior court in the present case was whether substantial evidence, on the whole record including the evidence presented to that court, supported the determination that no EIR was required. The superior court's finding-that the council's resolution was supported by substantial evidence 'in the administrative record'-is not responsive to that issue.

Plaintiffs appealed and unsuccessfully sought a stay order from the Court of Appeal.[FN7] Since the appeal presented issues of public importance, which would be mooted if Occidental completed the drilling project pending appeal, we ordered the cause transferred to this court, issued a stay order and returned the cause to the Court of Appeal. (See People ex rel. S.F. Bay etc. Com. v. Town of Emeryville (1968) 69 Cal.2d 533, 537, 72 Cal.Rptr. 790, 446 P.2d 790.) The action is now here on petition for hearing from the Court of Appeal decision.

> FN7. On January 15, 1973, the superior court entered a minute order denying plaintiffs' request for preliminary and final injunctions, declaratory relief, and mandamus. The order also denied plaintiffs' motion for stay of execution, and directed counsel for Occidental to prepare findings and judgment.
>
> Plaintiffs appealed from that minute order and any ensuing judgment. Although the order did not constitute a final judgment on the merits, plaintiffs' appeal was timely both with respect to the denial of a preliminary injunction and the denial of stay of execution (see Code Civ.Proc., s 904.1; Brydon v. City of Hermosa Beach (1928) 93 Cal.App. 615, 620, 270 P. 255). Final judgment has now been entered, rendering moot the denial of preliminary relief.

2. The council erroneously failed to render a written determination respecting the environmental effect of the drilling project before it approved that project.

[7] As the superior court recognized, CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, Before it approves that project. [FN8] *80 Finding the council's action of October 17 ambiguous, the court remanded the matter to the council for clarification. The council passed a resolution stating that it believed, as of October 1972, that

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the drilling project was not such as might have a significant impact; the court accepted this resolution as constituting the requisite determination of environmental issues before approval of the project.

FN8. See Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d 247, 262, 104 Cal.Rptr. 761, 502 P.2d 1049. The statutory definition of an EIR requires that the report be considered before a project is approved (see Pub. Resources Code, s 21061), which necessarily implies that the decision whether or not to prepare a report must precede approval of the project. The CEQA guidelines expressly state that 'The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. These things must be done prior to approval or disapproval of the project.' (Cal.Admin.Code, tit. 14, s 15012.) (Emphasis added.)

[8] We conclude, however, that a determination that a project does not require an EIR, when that project is not exempt ***42 **74 from environmental study under the act or guidelines,[FN9] must take the form of a written Negative Declaration. Such is the unanimous view of the federal courts construing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. s 4321 et seq.),[FN10] and the explicit requirement of both federal and state guidelines. (See Council on Environmental Quality, Guidelines on Preparation of Environmental Impact Statements, s 1500.5, 38 Fed.Reg. 20552 (1973); Cal.Admin.Code, tit. 14, s 15083.)[FN11] Absent such a written determination,*81 there is no way a court can determine whether agency silence represents a decision that a project does not require an EIR or a failure to decide that issue.

FN9. Public Resources Code section 21085 provides that no environmental study is required if a project comes within a category exempt by administrative regulation; the Resource Agency guidelines list seven such categorical exemptions (Cal.Admin.Code, tit. 14, ss 15101-15107.) Guideline 15060 also provides generally that no environmental study is needed if 'it can be seen with certainty that the activity in question will not have a significant effect on the environment.'

FN10. See, e.g., Hanley v. Mitchell (2 Cir. 1972) 460 F.2d 640; Hanly v. Kleindienst (2 Cir. 1972) 471 F.2d 823; cf. Environmental Defense Fund, Inc. v. Ruckelshaus (1971) 142 U.S.App.D.C. 74, 439 F.2d 584, 598.

FN11. Guideline 15083 specifies that a Negative Declaration must include a brief description of the project, a finding that the project will not have a significant effect, and a statement of reasons to support that finding. The city maintains that since section 15083 did not take effect until February of 1973, its specifications should not be applied to the decision of the city council in October of 1972. The requirement that a finding of no significant impact take the form of an express written determination, however, is implicit in the act itself, and could have been deduced in October of 1972 from examination of the act, from our decision in Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d 247, 108 Cal.Rptr. 761, 502 P.2d 1049 and from the federal cases cited in that decision.

Plaintiffs in turn assert that a Negative Declaration should go beyond the specifications of section 15083 and contain a full exposition of all relevant environmental factors; they contend that section 15083, which contemplates only a conclusory one-page document, is invalid under the terms of CEQA. Language in Hixon v. County of Los Angeles (1974) 38 Cal.App.3d 370, 380, 113 Cal.Rptr. 433 notwithstanding, plaintiffs' contention presents a justiciable issue. (See Desert Environment Conservation Assn. v. Public Utilities Com. 1973) 8 Cal.3d 739, 742-743, 106 Cal.Rptr. 31, 505 P.2d 223.) Its resolution, however, should await a case which arises after the effective date of the challenged regulation.

We do not question the power of a trial court to re-

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mand a matter to an administrative agency for clarification of ambiguous findings. (See Keeler v. Superior Court (1956) 46 Cal.2d 596, 600, 297 P.2d 967.) This doctrine, however, does not apply to the present case. This is not a case in which an agency rendered ambiguous findings concerning the environmental effect of the project, but a case of total absence of any written determination on the matter; for all the record reveals, the council may have simply ignored CEQA and enacted the ordinances in the same manner to which it was accustomed before CEQA was enacted.[FN12]

> FN12. Neither CEQA nor Code of Civil Procedure section 1094.5 require rendition of findings of fact in quasi-legislative proceedings; our opinion imposes no such requirement. We hold only that when the agency makes a determination whether a project requires an EIR, as CEQA requires it to do, it should put that determination in writing.

[9] At the time of the January 8, 1973, resolution, the council had already approved the project. No resolution adopted on that date can constitute that determination of environmental impact prior to approval of the project which the act requires. The resolution adopted at that meeting represents simply an example of that 'post hoc rationalization' of a decision already made, which the courts condemned in Citizens to Preserve Overton Park v. Volpe (1971) 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 136, 420 and Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 27 Cal.App.3d 695, 706, 104 Cal.Rptr. 197.

In failing to render a written determination of environmental impact before approving***43 **75 the project, the council proceeded in a manner contrary to the requirements of law. (See Pub. Resources Code, s 21168.5.) This failure cannot be excused on the theory that the council might have approved the drilling project anyway; 'to permit an agency to ignore its duties . . . with impunity because we have serious doubts that its ultimate decision will be affected by compliance would subvert the very purpose of the Act.' (City of New York v. United States (E.D.N.Y.1972) 337 F.Supp. 150, 160 (NEPA); Arizona Public Service Co. v. Federal Power Com'n (1973) 157 U.S.App.D.C. 272, 483 F.2d 1275, 1283; see Jones v. District of Columbia Redev. Land Agency (D.C.Cir. 1974) 499 F.2d 502, 512.)

*82 3. The city council followed an erroneous test in deciding that the drilling project did not require an environmental impact report.

As we have explained, the council's resolution of January 8, 1973, cannot be given retroactive effect to validate the council's actions of the previous October. We now point out that the council's resolution is defective on a second ground, namely, that the council employed incorrect standards in determining that the drilling project did not require an EIR.

Public Resources Code section 21151, as of October 1972, provided that local government agencies not having an officially adopted conservation element of a general plan (such as the City of Los Angeles) 'shall make an environmental impact report on any Project they intend to carry out Which may have a significant effect on the environment.' (Emphasis added.) Although section 21151 was amended effective December 5, 1972,[FN13] the italicized words, the focus of the present controversy, are identical in both the original and amended sections.[FN14]

> FN13. Section 21151 now provides that 'All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment . . ..' The amendment authorized agencies to contract for preparation of an EIR instead of preparing it themselves, added the requirement for an EIR when the agency approves a private project (thus codifying the holding in Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d 247, 104 Cal.Rptr. 761, 502 P.2d 1049) and eliminated the exemption for cities with an officially adopted conservation element in their general plan.
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> FN14. The defendants concede that the test wells constitute a 'project' as defined in Public Resources Code section 21065, and that the enactment of the ordinances estab-

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lishing oil drilling districts constitutes the carrying out of such a project within the terms of section 21151. Plaintiffs maintain that the scope of the 'project' whose impact is at issue encompasses not only the drilling of the test wells but also the possibility of subsequent commercial production. (See fn. 5, Supra.)

The trial court, on remanding this cause to the city council for clarification, interpreted this section to compel preparation of an EIR only when 'there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature.' As we shall explain, this test sets far too high a barrier to the preparation of an EIR. [FN15]

FN15. We do not think this court at this time should draft a substitute test. The responsibility for formulation of such a test is expressly delegated by CEQA to the State Resources Agency. (See Pub. Resources Code, s 21083.) That agency has defined 'significant effect' as 'a substantial adverse impact on the environment' (Cal.Admin.Code, tit. 14, s 15040)-a definition which differs markedly from that advanced by the trial court-and listed those environmental consequences which ordinarily indicate that a project may have a significant effect. (Cal.Admin.Code, tit. 14, s 15081.)

The Attorney General, as amicus curiae, stated his opposition to the guideline's definition of 'significant effect' on the ground that agency action may significantly affect the environment even if the agency believes that effect to be beneficial rather than 'adverse.' (Cf. Hiram Clark Civic Club, Inc. v. Lynn (5th Cir. 1973) 476 F.2d 421, 426-427 (NEPA); Goose Hollow Foothills League v. Romney (D.or.1971) 334 F.Supp. 877, 879 (NEPA).) One writer has also suggested that the term 'substantial' imposes too high a threshold level for the preparation of EIRs. (Comment, Aftermammoth: Friends of Mammoth and the Amended California Environmental Quality Act (1973) 3 Eco.L.Q. 349, 367-368, fn. 111.) In the light of such criticism, the secretary for resources has announced that the resources agency will 'do additional work' on this guideline, and schedule public hearings at a later date. (Letter from N. B. Livermore, dated Feb. 5, 1974, accompanying the issuance of the amended CEQA guidelines.)

Under these circumstances, we believe it would be inappropriate for us to utilize the present case to determine the validity of section 15040, or to preempt the Resources Agency by drafting an alternative definition. Our conclusion that the trial court's definition is patently erroneous is sufficient to decide the present appeal.

***83 ***44 **76** CEQA requires an EIR only for projects whose environmental effect can be described as 'significant.'

[10] This key word, however, is not a term of precision but encompasses a range of meaning.[FN16] It cannot be adequately defined by a random selection of synonyms from a thesaurus. Facing a spectrum of possible meanings, describing a range extending from projects of relatively minor import to those of truly momentous proportions, the court's task is to indicate the point on this spectrum beyond which the seriousness of the foreseeable impact dictates preparation of an EIR.

FN16. As stated by Judge Friendly, construing the phrase 'significantly affecting the quality of the human environment' in NEPA (42 U.S.C. s 4332): 'While . . . determination of the meaning of 'significant' is a question of law, one must add immediately that to make this determination on the basis of the dictionary would be impossible. Although all words may be 'chameleons, which reflect the color of their environment,' C.I.R. v. National Carbide Corp., 167 F.2d 304, 306 (2d Cir. 1948) (L. Hand, J.), 'significant' has that quality more than most. It covers a spectrum ranging from 'not trivial' through 'appreciable' to 'important' and even 'momentous.'" (Hanly v. Kleindienst (2d Cir. 1972) 471 F.2d 823, 837 (dissenting opinion of Friendly, J.).)

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(For discussion of Hanly v. Kleindienst, see fn. 18, Infra.)

Moreover, CEQA does not speak of projects which Will have a significant effect, but those which May have such effect. Although we agree with the trial court that the word 'may' connotes a 'reasonable possibility,' that phrase again encompasses a range of meaning extending from the most unlikely possibility which might influence the views of a reasonable man to events which fall but a hair short of certainty.

[11] In interpreting section 21151, our principal guide is the fact, recognized in Friends of Mammoth, 'that the Legislature intended (CEQA) to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' (Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d at p. 259, 104 Cal.Rptr. at p. 768, 502 P.2d at p. 1056, accord, County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 804, 108 Cal.Rptr. 377; see ***84**Environmental Defense Fund, Inc. v. Coastside County Water Dist., Supra, 27 Cal.App.3d at p. 701, 104 Cal.Rptr. 197.) The EIR is the 'heart' of CEQA (County of Inyo v. Yorty, Supra, 32 Cal.App.3d at p. 810, 108 Cal.Rptr. 377), the principal method by which environmental data are brought to the attention of the agency and the public. Consequently that interpretation of section 21151 which will 'afford the fullest possible protection to the environment within the reasonable scope of the statutory language' (Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d at p. 259, 104 Cal.Rptr. 761, 768, 502 P.2d 1049, 1056) is one which will impose a low threshold requirement for preparation of an EIR. [FN17]

FN17. '(I)n view of the clearly expressed legislative intent to preserve and enhance the quality of the environment . . ., the courts will not countenance abuse of the 'significant effect' qualification as a subterfuge to excuse the making of impact reports otherwise required by the act.' (Friends of Mammoth v. Board of Supervisors, Supra, 8 Cal.3d at p. 271, 104 Cal.Rptr. at p. 777, 502 P.2d at p. 1065.)

As stated by Judge Friendly, discussing the federal act, 'It is not readily conceivable that Congress meant to allow agencies to avoid this central requirement by reading 'significant' to mean only 'important,' 'momentous,' or the like. One of the purposes of the impact statement is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit Federal resources*****45 **77** to the project; the statute must not be construed so as to allow the agency to make its decision in a doubtful case without the relevant data or a detailed study of it.' (Hanly v. Kleindienst, Supra, 471 F.2d at pp. 837-838 (dissenting opinion).) [FN18]

FN18. The majority opinion in Hanly v. Kleindienst (2d Cir. 1972) 471 F.2d 823 advanced the view that an environmental impact statement is not required in merely close and arguable cases If the agency submits, in lieu of such statement, a fully detailed explanation of its reasons for concluding that the project will not have a significant environmental effect. The majority in Hanly v. Kleindienst then reviewed a 25-page 'Assessment of the Environmental Impact' prepared by a government agency to support its conclusion that a proposed jail would not significantly affect the environment, and held that this assessment was inadequate because it failed to include findings with respect to some relevant environmental considerations. (471 F.2d at p. 834.) Judge Friendly's dissent suggests that the agency could as easily have prepared an environmental impact statement.

[12] In limiting the use of EIRs to projects which may have an 'important' or 'momentous' effect, the trial court adopted a test which will necessarily bar preparation of an EIR in those close and doubtful cases to which Judge Friendly referred, and will, to that extent, defeat the Legislature's objective of ensuring that environmental protection serve as a guiding criterion in agency decisions. (Pub. Resources Code, s 21000, subd. (d).) Indeed, the trial court test of 'significant impact' imposes a far higher threshold barrier to the preparation of an EIR than any suggested in state or federal guidelines or in any reported decision; its ***85** interpretation affords not the fullest, but the least

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possible protection to the environment within the statutory language. FN19

FN19. Anderson, NEPA in the Courts (1973) reviews the federal decisions under NEPA and concludes that they have given the act 'the widest possible scope of application' (p. 56) and imposed a 'low threshold' for preparation of an environmental impact statement (the federal equivalent of California's environmental impact report).

In addition, the trial court added the gratuitous stipulation that no EIR is required unless the environmental effect of a project is 'of a permanent or long enduring nature.' We find no statutory warrant for this restriction; although the duration of an environmental effect is one of many facts which affect its significance, nothing in the act suggests that short-term effects cannot be of such significance as to require an EIR.

The trial court's test also erred in its omission of important considerations which called for the preparation of an EIR in the instant case. Evaluation of the environmental impact of the drilling project in the instant case required resolution of a factual dispute concerning the probability that the project might cause landslides or blowouts. In such cases, an EIR-an impartial, detailed, and factual analysis of the project's effect-can perform an invaluable service in aiding the agency's resolution of the dispute. As pointed out in County of Inyo v. Yorty, Supta, 32 Cal.App.3d 795, 814, 108 Cal.Rptr. 377, 390, in such cases of factual controversy 'The very uncertainty created by the conflicting assertions made by the parties as to the environmental effect . . . underscores the necessity of the EIR to substitute some degree of factual certainty for tentative opinion and speculation.'

[13][14] Thus we conclude, as did the court in County of Inyo v. Yorty, that an agency should prepare an EIR whenever it perceives 'some substantial evidence that a project 'may have a significant effect environmentally. " (32 Cal.App.3d at p. 809, 108 Cal.Rptr. at p. 387.) As stated by Judge J. Skelly Wright in Students Challenging Reg. Agency Pro. v. United States (D.D.C.1972) 346 F.Supp. 189, 201, an environmental impact report should be prepared 'whenever the action Arguably will have an adverse environmental impact.' (Emphasis in original.) FN20

FN20. The United States Supreme Court noted jurisdiction in Students Challenging Reg. Agency Pro. v. United States, affirmed the district court's holding that the plaintiff had standing, but ruled that the district court lacked jurisdiction to enjoin the Interstate Commerce Commission. (United States v. S.C.R.A.P. (1973) 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254.) Its opinion does not discuss the standards for preparation of an environmental impact statement.

***46 **78 [15][16][17] Furthermore, the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation*86 of an EIR is desirable.FN21 One major purpose of an EIR is to inform other government agencies, and the public generally, of the environmental impact of a proposed project (see County of Inyo v. Yorty, Supra, 32 Cal.App.3d 795, 810, 108 Cal.Rptr. 377; Environmental Defense Fund, Inc. v. Coastside County Water Dist., Supra, 27 Cal.App.3d 695, 704-705, 104 Cal.Rptr. 197; cf. Jones v. District of Columbia Redev. Land Agency (D.C.Cir. 1974) 499 F.2d 502, 511 (NEPA)), and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. A simple resolution or Negative Declaration, stating that the project will have no significant environmental effect, cannot serve this function.

FN21. The federal guidelines for NEPA provide that 'Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases.' (Council on Environmental Quality, Guidelines on Preparation of Environmental Impact Statements, s 1500.6, 38 Fed.Reg. 20551 (1973).) These guidelines, first adopted in 1971, were in effect at the time of trial in the instant case. Since the California act was modeled on the federal statute, judicial and administrative interpretation of the latter enactment is persuasive authority in interpreting the California act. (See Environmental Defense Fund, Inc. v. Coastside County Water Dist., Supra, 27 Cal.App.3d

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695, 701, 104 Cal.Rptr. 197.)

> The state guidelines, which took effect while this case was pending on appeal, provide that 'where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect (of the project) to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.' (Cal.Admin.Code, tit. 14, s 15081.) Although defendants suggest that this language is intended to imply by omission that public opinion is relevant to the question of whether the project's net effect is 'adverse,' but not to the question whether that effect is 'significant,' this seems a wholly illogical interpretation. The need for a full report to provide information and quiet public apprehension is at least as great in cases, such as the present action, where the controversy concerns the risk of an admittedly adverse effect as in cases in which the controversy concerns whether a predicted effect is adverse or benign.

Having decided that the trial court's instruction to the city council erred both in its definition of 'significant impact' and in its omission of considerations suggesting the need for an EIR in the instant case, we must now determine whether that error prejudicially affected the proceedings before the city council. The principal issue here is whether the city council, on remand, did in fact employ the test stated by the trial court.

Upon the remand of the matter to the council, that body scheduled a public hearing on January 8, 1973, at which it received additional testimony and argument concerning the environmental effect of the drilling project. The council then resolved, by an eight-to-seven vote, not to require an EIR. Several councilmen explained their votes; four councilmen, two who favored and two who opposed the resolution, explicitly ***87** phrased their determination in terms of the trial court's test. Another councilman, who had previously voted in favor of the drilling districts, asked the city's assistant administrative officer for petroleum matters whether the effect of a blowout would have a 'permanent long-enduring nature.' Receiving a negative reply, he stated that he had heard nothing to change his mind, and voted for the resolution.

[18] The record of the proceeding before the council on January 8 convinces us, as it did the trial court,[FN22] that the council *****47 **79** employed the trial court's test in resolving against preparation of an EIR. Since that resolution carried by a bare eight-to-seven majority, we are compelled to conclude that the use of a test which limits EIRs to projects of momentous and semi-permanent effect, and which excludes the presence of disputed factual issues of public controversy as criteria suggesting preparation of a report, prejudicially affected the council's decision. [FN23]

> FN22. On January 15, the court announced its intention to rule against plaintiffs. The judge observed that '(T)he court formulated a test to be applied in interpreting the language 'may have a significant effect on the environment,' the key phrase in these proceedings. This test is as follows: Is there a reasonable possibility that the project will have a momentous or important effect of a permanent or long-enduring nature? . . . With this test clearly in mind-it was alluded to in one form or another fourteen separate times by the city council-the council on January 8, without remand, adopted a resolution. . . . This court finds that the resolution is synonomous with a statement that the contemplated project is not one which may have a significant effect on the environment.'

> FN23. Pointing to a letter by the city attorney dated October 3, 1973, defendants argue that the council, when it approved the ordinances, was aware that the then unmodified Friends of Mammoth opinion established a test requiring an EIR for all projects with a 'non-trivial' effect. Defendants infer that the council, in approving those ordinances, silently employed that test and found that the drilling project would have only a trivial impact on the environment. Defendants also infer that the resolution of January 1973, stating the council's belief as of October 1972 that the project would not have a significant

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> impact, referred to the definition of 'significant effect' as 'nontrivial effect' which the council inferably followed in October. Piling inference upon inference, defendants conclude that if the council consistently utilized the test of significant effect set out in the unmodified Friends of Mammoth opinion, the trial court's erroneous test could not have influenced the council's decision.
>
> We reject the inferences proposed by the defendants. Our review of the council proceedings of October 10, October 17, and January 8 reveals no instance in which a councilman who voted in favor of the ordinances indicated that he did so on the basis of the 'nontrivial effect' test of the unmodified opinion in Friends of Mammoth.

Defendants point out that the eight councilmen who voted in favor of the resolution filed declarations on December 6, prior to the trial court's pronouncement of its test of 'significant effect,' which stated that the oil drilling districts were not projects such as might have a significant environmental effect. Relying on these declarations, defendants contend that the eight councilmen had made up their minds before the *88 January 8 meeting; defendants imply that no test set out by the trial court-correct or incorrect-would have influenced them.

[19][20] The argument is certainly a strange one. As the Attorney General points out, it is analogous to a contention that an erroneous jury instruction is not prejudicial because the jurors had already resolved to convict the defendant regardless of the court's instructions. When, as here, a court remands a case to an administrative agency with directions to follow a specific legal test, we must presume that the administrators faithfully followed those instructions. (See Evid.Code, s 664.)[FN24] The presumption is rebuttable, but the declarations of the councilmen filed prior to the trial court's statement of its test fall far short of showing that the council subsequently failed to follow that test.

> FN24. Evidence Code section 664 states that 'It is presumed that official duty has been regularly performed.' This is a rebuttable presumption going to the burden of proof. (Evid.Code, s 660.)

[21] Section 21168.5 permits a court to reverse a determination of a public agency for 'prejudicial abuse of discretion.' 'Abuse of discretion is established if the agency has not proceeded in a manner required by law.' (Pub. Resources Code, s 21168.5.) The council's use of an erroneous legal standard constitutes a failure to proceed in the manner required by law. (See Gilles v. Department of Human Resources Development (1974) 11 Cal.3d 313, 329, 133 Cal.Rptr. 374, 521 P.2d 110.)

The record in this case demonstrates that this error of law was prejudicial. The present case, in fact, is an excellent example of those close and arguable cases **80 in which an EIR should be prepared. With the council confronting allegations, ***48 supported by expert testimony but controverted by opposing testimony, that the drilling projects could cause an environmental disaster, the value of an impartial environmental analysis cannot be gainsaid. The intense and continuing public concern with these hazards, and with the impact of oil drilling in the vicinity of public beaches and residential neighborhoods, equally suggests the need for a thorough and impartial study. Under these circumstances, we believe that the council, employing a proper test, would have decided to direct preparation of an EIR.

4. Conclusion.

For the reasons stated in parts 2 and 3 of this opinion, we conclude that the judgment of the superior court must be reversed. The superior court shall set aside the ordinances establishing the oil drilling districts on the ground that the city, in enacting these ordinances, failed to comply with the provisions of CEQA. The city, of course, may choose to reenact*89 these ordinances after complying with the requirements of that act.[FN25]

> FN25. Occidental suggests that an opinion requiring the trial court to set aside the ordinances will require Occidental to file new applications for the creation of the drilling districts, and compel the city to follow anew all procedural steps preparatory to the

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enactment of the ordinance. To quiet such apprehensions, we note that our opinion does not compel the trial court to vacate any action, such as the filing of an application for an ordinance, which may lawfully precede the city's determination whether to prepare an environmental impact report. Occidental has not called our attention to any ordinance or rule of the City of Los Angeles which would, under the circumstances of this case, compel repetition of any actions which may lawfully precede that determination.

The judgment is reversed, and the cause remanded to the superior court to proceed in accordance with the views herein expressed.[FN26]

FN26. In view of our disposition of this appeal, plaintiffs' motion for leave to produce new evidence on appeal is moot.

WRIGHT, C.J., and SULLIVAN and MOLINARI,[FN*] JJ., concur.

FN* Assigned by the Chairman of the Judicial Council.

CLARK Justice.

I dissent.

When enacting a zoning ordinance in 1972, the Los Angeles City Council was not required to render a written negative declaration to evidence its determination that the ordinance would have no significant effect on the environment. There was no express requirement of such writing and no basis for implying one. The city council proceeded in a manner required by law, and the evidence before us fully supports the determination that the proposed test holes will have no significant effect on the environment.

In enacting the present zoning ordinances, the city council performed a legislative function. (Johnston v. City of Claremont (1958) 49 Cal.2d 826, 835-836; Clemons v. City of Los Angeles (1950) 36 Cal.2d 95, 98, 222 P.2d 439; Lockard v. City of Los Angeles (1949) 33 Cal.2d 453, 460, 202 P.2d 38.) As recognized by the majority (Ante, p. 38), the city council was not required to hold an evidentiary hearing, and judicial review of the council's action is governed by traditional mandamus principles rather than the administrative mandamus procedure of Code of Civil Procedure section 1094.5. (Pub. Resources Code, ss 21168, 21168.5, 21168.7.) Thus the requirement of administrative findings set forth in section 1094.5 (see Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.2d 506, 511, 522, 113 Cal.Rptr. 836, 522 P.2d 12) is not applicable to the adoption of the ordinances,[FN1] and no other principle of general law or charter provision has been cited***49 or found requiring the Los Angeles City Council to make findings of fact in adopting ordinances.

FN1. The statement of the majority that Occidental in seeking rezoning was circumventing the requirement of a conditional use permit is misleading and unfortunate. (Ante, p. 39.) In Topanga, this court stated that rezoning was the appropriate method to obtain a special use for a large parcel. (11 Cal.3d at p. 522, 113 Cal.Rptr. 836, 522 P.2d 12.)

*90 **81 There is no express provision in the California Environmental Quality Act (Pub. Resources Code, s 21000 et seq.) (hereinafter CEQA), [FN2] as enacted in 1970 or in its present form, requiring prior to project approval either 'findings' or any written determination that a project will not have a significant effect on the environment. To the contrary, the language of CEQA indicates that written findings were not contemplated for such a determination. Section 21168.5 provides that abuse of discretion may be established either by showing that the agency failed to proceed in a manner required by law or by showing that the 'determination or decision' is not supported by substantial evidence. (s 21168.5; italics added.) Clearly the act contemplates Only that the determination be made. If the Legislature had intended written findings, it could easily have said that abuse of discretion is established when the decision is not supported by the Findings, or the Findings are not supported by substantial evidence. (Cf. Code Civ.Proc., s 1094.5; Topanga Assn. for a Scenic Community v. County of Los Angeles, Supra, 11 Cal.3d 506, 113 Cal.Rptr. 836, 522 P.2d 12.)[FN3]

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FN2. Unless otherwise stated, all statutory references are to the Public Resources Code.

FN3. The absence of an express statutory requirement of 'findings' distinguishes the instant case from Topanga. In Topanga we determined that the administrative mandamus procedure of Code of Civil Procedure section 1094.5, by providing that abuse of discretion is established if the administrative decision 'is not supported by the findings, or the findings are not supported by the evidence,' required that agencies subject to review by administrative mandamus must set forth specific findings. (11 Cal.3d at p. 515, 113 Cal.Rptr. at p. 841, 522 P.2d at p. 17.)

Our reasoning in Topanga was that the Legislature must have intended specific findings in view of the fact that it established the reviewing court's duty to compare the evidence and ultimate decision to "the findings' . . .' (11 Cal.3d at p. 515, 113 Cal.Rptr. 836, 522 P.2d 12, italics added.) We noted that '(i)f the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's Action.' (11 Cal.3d at p. 515, 113 Cal.Rptr. at p. 841, 522 P.2d at p. 77; italics added.) On the basis of the Topanga rationale we must conclude the Legislatue did Not intend findings in the case of CEQA, for it has provided that the evidence be compared only to the 'determination or decision' of the agency. (s 21168.5.)

The majority disclaims having imposed any requirement of findings on the legislative process, stating that it requires only that the determination of no significant effect on the environment be put in writing. (Ante, p. 42.) The majority reasons that in the absence of such writing there is no way a court can tell if the agency actually made the determination. If this is the case, the requirement would seem fully satisfied by either the declarations of the councilmen submitted prior to trial or the council resolution of 8 January 1973. These eliminate the majoirty's objection to the record, i.e., they show that a determination was in fact made prior to approval of the ordinances.

By the lengthy impeachment of the council resolution (ante, pp. 43-48), however, the majority requires more of a negative declaration than a mere wtitten statement of the fact of determination. The resolution adequately satisfied the only Formal requirement Purportedly imposed by the majority. By going behind the resolution, the majority in effect require not only that the determination be reduced to writing but also that it affirmatively evidence proper supporting reasons.

***91** Further support for the conclusion that CEQA did not require a written negative declaration is furnished by this court's decision in Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 270, 104 Cal.Rptr. 761, 502 P.2d 1049. Friends of Mammoth expressly rejected a requirement of written findings when an agency approves a project after preparation of an environmental impact report. It appears inconsistent to imply a requirement of written findings for a determination that no environmental impact report is necessary when this court refused to imply a requirement for such findings for the more important decision whether to approve a project in light of the admitted adverse environmental effects disclosed by an environmental impact report.

*****50** Sound practical considerations militate against the implication of formalistic requirements into the legislative process. When the legislative body has complied with all substantive requirements and all express formalistic requirements, the majority's****82** will should not be frustrated by adding a formalistic requirement, the necessity for which could only be foreseen by those possessing acute clairvoyance.

The unreasonableness of implying a formalistic requirement into the legislative process is dramatically illustrated by the requirement implied by the majority today. Unless the legislative body somehow anticipated today's implied requirement of a written determination, every ordinance affecting the use of land

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adopted between the enactment of CEQA in 1970 and the adoption of the guidelines in 1973 has been improperly adopted, including ordinances involving projects where 'it can be seen with certainty that the activity in question will not have a significant effect on the environment.' Although projects coming within the quoted term are presently exempt from the written negative declaration requirement expressly imposed by the guidelines (Cal.Admin.Code, tit. 14, s 15060,) the guidelines with the three-tiered structure relied upon by the majority were not adopted until 1973.[FN4] Probably thousands of ordinances*92 including those coming within the quoted term were not preperly adopted under today's majority opinion.[FN5]

FN4. The 1972 amendments to CEQA provide that the guidelines shall contain a list of classes of projects which the Secretary of the Resources Agency has found do not have a significant effect on the environment. (s 21084.) A project falling within these classes is exempt from the provisions of CEQA. (ss 21084, 21085.) The guidelines presently contain a list of such projects. (Cal.Admin.Code, tit. 14, ss 15100-15112.) However, CEQA itself does not exempt any projects other than ministerial ones and emergency repairs to public service facilities (ss 21080, 21085); hence there were no projects other than those mentioned in CEQA which were exempt until promulgation of the guidelines.

In general the guidelines establish a three-tiered structure-projects for which an EIR is filed; projects for which a negative declaration is filed, and categorically exempt projects. However, only a two-tiered structure is provided as to the type of ordinance before us. Activities for the purpose of 'basic data collection' or 'resource evaluation' are categorically exempt unless the activity will result in a 'serious or major disturbance to an environmental resource.' (Cal.Admin.Code, tit. 14, s 15106.) If the activity would result in a 'serious or major disturbance to an environmental resource,' it would seem perforce that an EIR is required. If not, the activity is exempt. In the instant case, if the city council finds such a disturbance, an EIR must be prepared. If it does not so find, there is not even a requirement of a negative declaration, for the guidelines do Not require filing of a negative declaration when a public agency approves a project that is categorically exempt. (Cf. Cal.Admin.Code, tit. 14, s 15035.5.)

FN5. Since the majority has implied the writing requirement, it could imply the exemption too-once the fabric is woven from thin air, it may be embellished at will. Nevertheless, implication of the requirement and the exemption in the absence of any language dealing with writing requirements or exemptions from them appears a clear invasion of the legislative process.

In imposing the requirement of a written determination on the legislative process, the majority also starts us down a dangerous path which, if followed in the future, will have unfortunate consequences. The majority implies the requirement not on the basis of language dealing with writings; the only language relied on is that set forth in the purposes of the act. However laudable or noble the purposes of a statute, the method to be followed by the city council in adopting ordinances under it should remain the same unless the statute itself or authorized regulations provide for a different method of enactment. To vary the method of enactment, depending upon judges' opinions as to the virtues of statutory purpose, is an improper interference with the legislative process and can only lead to confusion and frustration of the majority's will.

Since the city council was not required to produce written findings of fact or a written determination in the form of a negative declaration, it must be presumed ***51 **83 that official duty has been regularly performed (Evid.Code, s 664) and that the legislative body has ascertained the existence of those facts essential to its action (e.g., Orinda Homeowners Committee v. Board of Supervisors (1970) 11 Cal.App.3d 768, 775, 90 Cal.Rptr. 88). As the council passed the ordinances without preparing an EIR, it must be presumed it had determined the informational holes would not have a significant effect on the envi-

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ronment.

Evidence of events occurring after the 17 October 1972 passage of the ordinances, including submission of declarations by the councilmen and the council resolution of 8 January 1973 (both of which stated that the ordinances were approved on 17 October 1972, because the council believed the limited drilling would have no significant effect on the environment)***93** does not establish that the council failed to make the determination. If anything the evidence tends to support the presumption that the determination was made. [FN6] In any event it was unnecessary for defendants to prove that the determination was actually made, for the issue should have been resolved in their favor when plaintiffs failed to adduce evidence sufficient to overcome the presumption.

> FN6. In a 17-page letter of 3 October 1972 the city attorney advised the city council that all projects which may have a significant effect on the environment required preparation of an EIR and specifically concluded that all Zone changes should be accompanied by an EIR if the permitted use may have a significant effect on the environment.

I conclude the council proceeded in a manner required by law. The inquiry thus is whether the council's determination is supported by substantial evidence. (s 21168.5.) There is ample evidence in the record to sustain the decision. The ordinances contemplated drilling of extremely limited scope. Only two informational test bore holes were authorized; the entire operation was to last only 90 days, with the rigs to be removed upon completion; and a number of other restrictions and conditions were imposed on the project. Under no circumstances was commercial production of oil to be permitted. With respect to the impact of the drilling vibrations, Occidental produced expert testimony that vibrations from the drilling at a point 150 feet from the drill site would be less than those caused by movement along the nearby highway, and 5 to 10 times less than the ambient vibrations outside the courtroom door. As to the possibility of a 'blowout,' there was evidence that the incidence of blowouts at urban drill sites was only 2/10 ths of 1 percent.[FN7] Occidental also introduced photographs demonstrating methods by which the drill site would be made aesthetically consonant with adjacent land uses. The foregoing represents only a sampling of the evidence marshalled by Occidental to dispel any doubts about the environmental effect of the test holes.

> FN7. The experts for plaintiffs conceded that the incidence of blowouts was 'very low' and that the petroleum industry had developed 'very sophisticated means' of preventing such accidents.

The limited drilling authorized by the ordinances is a 'basic data collection' or 'resource evaluation' activity inasmuch as the object of the drilling is to determine the size and yield of the Riviera oil field and obtain data essential to a thorough environmental assessment of oil production. Unless the city council determines that this activity will result in a 'serious or major disturbance to an environmental resource' the proposed test holes will be Categorically exempt from CEQA under the present guidelines. (Cal.Admin.Code, tit. 14, s 15106.) In the event ***94** the council concludes the drilling will not result in a serious or major disturbance to an environmental resource, the city council will Not be required to render a written negative declaration nor any writing whatsoever prior to appproval*****52** of the ordinances, for the guidelines ****84** do not require Any writing for a determination that a project is categorically exempt from CEQA. The agency 'may' file a brief notice of exemption but is not compelled to. (Cal.Admin.Code, tit. 14, s 15035.5.) This observation only highlights the futility, as well as the inappropriateness, of the requirement which he majority implies today.

I would affirm the judgment.[FN8]

> FN8. The majority balks at resolving a number of questions highly pertinent to cases arising under CEQA, which I feel leaves the disposition of this case and others uncertain to an unfair extent. Specifically, the majority does not decide what is required in a negative declaration and declines to formulate a more definite test for determining what constitutes a 'significant effect' on the environment. Thus, while the city council must now redetermine the environmental issues involved, it does not even have assurance that adherence

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> to the standards set forth in the guidelines is the proper course to pursue. The majority remands the case without informing the council what is expected of it in future deliberations.
>
> The unwarranted aspersions cast by the majority on the application of the political process in this case perhaps explain the majority's willingness to reach its desired result without confronting the important questions of law. The record, however, provides no basis for believing the political channels were abused in any manner.

McCOMB and BURKE,[FN*] JJ., concur.

> FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

Rehearing denied; CLARK, J., dissenting.
MOSK, J., did not participate.
Cal. 1974.
No Oil, Inc. v. City of Los Angeles
13 Cal.3d 68, 529 P.2d 66, 118 Cal.Rptr. 34, 7 ERC 1257, 5 Envtl. L. Rep. 20,166

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THE PEOPLE, Plaintiff,
v.
HARRY OKEN et al., Defendants; TONY ALARCON, Appellant; EL MONTE SCHOOL DISTRICT et al., Respondents.
Civ. No. 22496.

District Court of Appeal, Second District, Division 3, California.
Apr. 17, 1958.

HEADNOTES

(1) Appeal and Error § 41--Decisions Appealable--Orders on Motion to Strike.
While an order striking a pleading is not ordinarily appealable, the rule is otherwise where a cross-complaint is directed against cross-defendants not otherwise parties to the action.

(2) Pleading § 171--Amendment--On Leave of Court.
An attempted incorporation of counts or causes of action in an amended cross-complaint without leave of court is ineffective and may not be treated as a part of the pleading in the case.
See **Cal.Jur.2d,** Pleading, § 232; **Am.Jur.,** Pleading, § 291.
(3) Schools § 56, 57--Buildings and Construction.
A private citizen may not maintain an action for a judgment declaring that the public interest and necessity require the construction by a school district of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" described in the pleading; where, when or how, if at all, a school district shall construct school buildings is within the sole competency of its governing board to determine.

(4) Eminent Domain § 11, 150(1)--Who May Exercise Right-- IndividualsPleadings.
A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the property sought to be acquired to one of the public uses provided in Code Civ. Proc., § 1238, but must also make it appear that he is authorized to devote the property to the public use in question or that he is a person authorized to administer or have "charge of such use."
See **Cal.Jur.2d,** Eminent Domain, §§ 229, 282; **Am.Jur.,** Eminent Domain, § 28.
(5) Pleading § 13--Subject Matter--Facts Judicially Noticed.
An allegation by way of conclusion that the pleader "is a person, competent and qualified to acquire the real property" described in his pleading "as agent of the state and/or person in charge of the uses" therein set forth, should be disregarded, where the appellate court judicially knows it is untrue.

(6) Schools § 2--Legislative Power and Duty.
Const., art. IX, §§ 5, 6, declaring that the Legislature shall provide for "a system of common schools" and "a public school system," make the school system a matter of state care and supervision; the term "system" itself imports a unity of purpose as well as entirety of operation, and the direction to the Legislature to provide "a" system of common schools means one system applicable to all common schools; this duty, so far as the state has by the adoption of the Constitution undertaken it, cannot be delegated to any agency.
See **Cal.Jur.,** Schools, §§ 2, 4.
(7) Pleading § 254--Motion to Strike--Amended Pleading.
An amended cross-complaint was properly stricken by the trial court where it wholly failed to state a cause of action and was patently frivolous and sham.

(8) Pleading § 254--Motion to Strike--Amended Pleading.
Though there is no statutory provision for striking complaints from the files as there is with respect to sham or frivolous answers (Code Civ. Proc., § 453), a court may, by virtue of its inherent power to prevent frustration or abuse of its processes, strike a purported complaint that fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration.

SUMMARY

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APPEAL from an order of the Superior Court of Los Angeles County striking a third amended cross-complaint. Aubrey N. Irwin, Judge. Affirmed.

COUNSEL

Alexander Ruiz and Manuel Ruiz, Jr., for Appellant.

Harold W. Kennedy, County Counsel (Los Angeles), and Edwin P. Martin, Deputy County Counsel, for Respondents.

PATROSSO, J. pro tem. [FN*]

FN* Assigned by Chairman of Judicial Council.

This is an appeal by cross-complainant Tony Alarcon from an order striking his third amended cross-complaint as against the cross-defendants El Monte School District and county of Los Angeles. (1) While an order striking a pleading is not ordinarily appealable, the rule is otherwise where, as here, the cross-complaint is directed against cross-defendants not otherwise parties to the action. (*Trask v. Moore* (1944), 24 Cal.2d 365, 373 [149 P.2d 854].)

The action in which the cross-complaint was filed is one instituted on behalf of the People of the State of California by ***458** the district attorney of Los Angeles County against numerous defendants, including cross-defendant, alleged to be the owners or occupants of properties within an area comprising some 24 acres located in the county of Los Angeles and commonly known as "Hick's Camp," to abate a public nuisance alleged to exist upon the properties located therein by reason of the maintenance thereon of dilapidated buildings and unsanitary conditions therein more particularly described.

A demurrer having been sustained with leave to amend to the original cross-complaint, appellant filed a second amended cross-complaint containing four separate causes of action. Demurrers interposed by the respondents to the latter complaint were sustained without leave to amend as to the first, second and fourth cause of action thereof. Thereafter appellant filed a third amended cross-complaint which was stricken upon motion of the respondents as hereinbefore stated.

The third amended cross-complaint, as is likewise true of its predecessors, is in many respects a remarkable document. It purports to incorporate therein by reference, the first, second and fourth causes of action of the second amended cross-complaint to which, as previously stated, demurrers had been sustained without leave to amend. It then alleges that the action is brought by the appellant "on behalf of apprximately [sic] 35 persons similarly situated, named defendants, in the second amended complaint of nuisance on file herein, and also as agent for the State of California, and the person in charge of the public uses hereinafter set forth and requested." It then alleges that the El Monte School District and numerous individually named cross-defendants claim an interest in the property described in Exhibit "A," attached to the cross-complaint, which apparently comprises a portion of the property described in plaintiff's complaint, whereon are located the conditions which are sought to be abated as a public nuisance. It further alleges "that the public interest and necessity require that the said property be acquired by cross complainant as agent of the State of California, as provided in section 1001 of the California Civil Code. That cross complainant, Tony Alarcon, is a person, competent and qualified to acquire the real property and improvements thereon, described herein, as agent of the State and/or person in charge of the uses hereinafter set forth. That cross complainant seeks to take and condemn private property, to wit: Real Estate and improvements, for the public uses hereinafter ***459** set forth. That the plaintiff and cross defendants, El Monte School District, Ernest Roll, District Attorney for Los Angeles County and the County of Los Angeles, are public bodies within the purview of subsection 21 of the section 1238 of the California Code of Civil Procedure, ... to wit: To demolish, clear, abate or remove buildings from the area known as 'Hicks Camp' and herein described in exhibit 'A,' for the reason that the same are detrimental to the health, safety and morals of the people, and because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings predominating in said area. That the public interest and necessity require the construction by the

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El Monte School District of a school building and also the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land hereinabove described. In conjunction therewith, said public interest and necessity require, that buildings, dwellings and structures within said tract of land be demolished, cleared, abated and/or removed, in the interest of the health, safety and morals of the people, because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings therein, in a manner that will be most compatible with the greatest public good and the least private injury. ... That there is grave danger of the creation of a public nuisance, unless the public uses herein referred to are provided for and the public interest and necessity stated above be adjuticated [sic]."

The cross-complaint closes with a prayer that the cross-defendants be required to set forth the nature, character, extent and value of their several estates or interest in the parcels of real property sought to be condemned and the severance damage, if any, accruing thereto; that the value of each separate interest or estate sought to be condemned and the severance damages, if any, be ascertained, and that upon payment to the defendants entitled to compensation of the several amounts so ascertained, the court make and enter a final order of condemnation, "conveying to cross complainant, as agent for the state, the properties for the public use above set forth."

We have ignored the allegations contained in the first, second and fourth causes of action, contained in the second amended cross-complaint, which were attempted to be incorporated ***460** by reference in the third amended cross-complaint in view of the fact that the demurrers interposed to these causes of action had, as noted, been sustained without leave to amend. (2) The attempted incorporation of these counts in the third amended cross-complaint without leave of the court is ineffective and they may not be treated as a part of the pleading in the case. (39 Cal.Jur.2d p. 339.) Moreover, without here undertaking to set forth in detail the voluminous allegations of said counts, we are completely satisfied that the trial court properly sustained the demurrers thereto without leave to amend. Each of these three causes of action seemingly undertakes to state a cause of action for monetary and injunctive relief against the respondents upon some undiscernible theory for damages which the cross-complainant and others similarly situated allegedly will sustain if the plaintiff prevails in its action to abate the nuisances alleged to exist upon the properties owned by them.

(3) From the allegations of appellant's pleadings which we have above summarized in some detail, it would appear that the relief which he seeks thereby as against the respondents is a judgment declaring that the public interest and necessity require the construction by the respondent El Monte School District of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" in the cross-complaint described. We know of no law, and none has been called to our attention, which authorizes a private citizen to maintain such an action. Where, when or how, if at all, a school district shall construct school buildings is a matter within the sole competency of its governing board to determine. (*Montebello Unified School Dist. v. Keay* (1942), 55 Cal.App.2d 839, 843-844 [131 P.2d 384].)

If, however, the third amended cross-complaint be construed as one whereby appellant as a private citizen seeks to acquire property for the purpose of constructing and operating a public school, it is likewise unauthorized by law. Section 1001 of the Civil Code, upon which appellant assertedly seeks to predicate his action, while authorizing any person, as "an agent of the State" or as "a person in charge of such use" to acquire private property under the power of eminent domain for any of the public uses provided in section 1238 of the Code of Civil Procedure is wholly without application. (4) A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the ***461** property sought to be acquired to one of the public uses provided in section 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use." (*Beveridge v. Lewis* (1902), 137 Cal. 619, 621 [67 P. 1040, 70 P. 1083, 92 Am.St.Rep. 188, 58 L.R.A. 581].) (5) While appellant alleges by way of conclusion that he "is a person, competent and qualified to acquire the real property" described in his pleading "as

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agent of the State and/or person in charge of the uses" therein set forth, the allegation must be disregarded, because we judicially know it is untrue. (*Wilson v. Loew's Inc.* (1956), 142 Cal.App.2d 183, 187-188 [298 P.2d 152].) (6) "The constitution declares that the legislature shall provide 'for a system of common schools,' or, as expressed elsewhere in the organic law, 'a public school system.' " (23 Cal.Jur. p. 18; Cal. Const., art. IX, §§ 5-6.) "By these two sections, the constitution makes the school system a matter of state care and supervision. The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools. And this duty to provide for the education of the children of the state, so far as the state has, by the adoption of the constitution, undertaken it, cannot be delegated to any agency." (23 Cal.Jur. 21-22.) As said in *Piper v. Big Pine School Dist.*, 193 Cal. 664, 669 [226 P. 926]:

"It is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state."

From the allegations of the cross-complaint, it affirmatively appears that "(i)n this case it is the school district, acting through its governing board, that is the agent of the State in charge of the use for which the land was sought." (*Montebello Unified School Dist. v. Keay, supra.*)

(7) The third amended cross-complaint wholly fails to state a cause of action and is patently frivolous and sham. ***462** It was therefore properly stricken by the trial court. (8) As said by this court in *Neal v. Bank of America* (1949), 93 Cal.App.2d 678, 682-683 [209 P.2d 825]:

"It may be conceded that there is no statutory provision for striking complaints from the files, as there is in respect to sham or frivolous answers. (Code Civ. Proc., § 453.) However, the courts have inherent power, by summary means, to prevent frustration, abuse, or disregard of their processes. (41 Am.Jur. §§ 346, 347, p. 527; anno., 13 Am.St.Rep. 640.) ... In *Santa Barbara County v. Janssens*, 44 Cal.App. 318 [186 P. 372], it was held that an order striking an amended cross-complaint from the files was within the jurisdiction of the trial court, and presumably correct in the absence of error disclosed by the record. The fundamental principle running through the cases is that a court is not required to tolerate a purported amended complaint which fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration. ... It cannot be doubted that the court had jurisdiction to strike plaintiff's amended complaint on the ground that it was frivolous and a sham and the order clearly was not an abuse of discretion."

The order appealed from is affirmed.

Shinn, P. J., and Wood (Parker), J., concurred.
A petition for a rehearing was denied May 7, 1958, and appellant's petition for a hearing by the Supreme Court was denied June 11, 1958. Carter, J., was of the opinion that the petition should be granted. ***463**

Cal.App.2.Dist.
People v. Oken
159 Cal.App.2d 456, 324 P.2d 58

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THE PEOPLE, Plaintiff and Respondent,
v.
DERRICK LEON THOMAS, Defendant and Appellant.
No. S025251.

Supreme Court of California
Dec 14, 1992.

SUMMARY

A complaint charged defendant with robbery (Pen. Code, § 211), and alleged firearm use (Pen. Code, § 12022.5, subd. (a)) and probation ineligibility (Pen. Code, § 1203.06). Defendant negotiated a plea bargain, with the precise term of imprisonment conditioned on the result of his motion to strike the firearm use enhancement. The trial court denied the motion to strike without indicating whether or not it was exercising discretion under Pen. Code, § 1385 (dismissal of action in furtherance of justice). Pursuant to the terms of the plea bargain, the court sentenced defendant to a five-year term of imprisonment. (Superior Court of Santa Clara County, No. 136555, Jeremy D. Fogel, Judge.) The Court of Appeal, Sixth Dist., No. H007449, affirmed, concluding that the trial court lacked authority to entertain a motion under Pen. Code, § 1385, to strike a firearm use enhancement provided for by Pen. Code, § 12022.5.

The Supreme Court affirmed the judgment of the Court of Appeal, holding that the trial court did not err in denying the motion to strike. In amending Pen. Code, § 1170.1, subd. (h), in 1989, the Legislature deleted Pen. Code, § 12022.5, from the list of statutory enhancements that a trial court might, in its discretion, strike if sufficient "circumstances in mitigation" exist. The court held that, although the power to dismiss an "action" "in furtherance of justice" under Pen. Code, § 1385, includes the power to dismiss or strike an enhancement, the Legislature, in deleting reference to Pen. Code, § 12022.5, could not have intended to preserve a power to strike that enhancement under Pen. Code, § 1385. The court held that, at least in the context of striking firearm use enhancements, the "circumstances in mitigation" and "furtherance of justice" standards are essentially identical. (Opinion by Lucas, C. J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Criminal Law § 529.2--Judgment, Sentence, and Punishment-- Imprisonment--Sentence Enhancements--Firearm Use--Trial Court's Power to Strike.
In a prosecution for robbery (Pen. Code, § 211), the trial court did not err in denying defendant's motion to strike a firearm use enhancement (Pen. Code, § 12022.5, subd. (a)). In amending Pen. Code, § 1170.1, subd. (h), in 1989, the Legislature deleted Pen. Code, § 12022.5, from the list of statutory enhancements that a trial court might, in its discretion, strike if sufficient "circumstances in mitigation" exist. Although the power to dismiss an "action" "in furtherance of justice" under Pen. Code, § 1385, includes the power to dismiss or strike an enhancement, the Legislature, in deleting reference to Pen. Code, § 12022.5, could not have intended to preserve a power to strike that enhancement under Pen. Code, § 1385. At least in the context of striking firearm use enhancements, the "circumstances in mitigation" and "furtherance of justice" standards are essentially identical.
[See **Cal.Jur.3d (Rev),** Criminal Law, § 3410; 3 **Witkin & Epstein,** Cal. Criminal Law (2d ed. 1989) § 1502.]
(2) Statutes § 21--Construction--Legislative Intent.
The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. In order to determine this intent, a court begins by examining the language of the statute. But it is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend. Thus, the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

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(3) Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
A court does not construe statutes in isolation, but rather reads every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.

COUNSEL

George L. Schraer, under appointment by the Supreme Court, and Winifred T. Gross, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Ronald A. Bass and John H. Sugiyama, Assistant Attorneys General, Martin S. Kaye, Laurence K. Sullivan, Herbert F. Wilkinson ***208** and Ronald S. Matthias, Deputy Attorneys General, for Plaintiff and Respondent.

Michael R. Capizzi, District Attorney (Orange) and E. Thomas Dunn, Jr., Deputy District Attorney, as Amici Curiae on behalf of Plaintiff and Respondent.

LUCAS, C. J.

In 1989, the Legislature amended Penal Code section 1170.1, subdivision (h) (all further statutory references are to this code), by deleting section 12022.5 (firearm use enhancements) from the list of statutory enhancements that a trial court might, in its discretion, strike if sufficient "circumstances in mitigation" exist. The question arises whether trial courts nonetheless may continue to strike such firearm use enhancements "in furtherance of justice" under section 1385. Because we find clear legislative intent to withhold such authority, we conclude the Court of Appeal in the present case correctly ruled the trial court herein lacked such authority.

On January 7, 1990, defendant Derrick Leon Thomas (age 18) and his companion (age 17) robbed a store in Palo Alto. Defendant was holding a loaded .22-caliber gun borrowed from his companion, who had taken it from his mother without her knowledge. The robbers took and divided $160 in cash, fled on bicycles, and were arrested a few minutes later.

A complaint charged defendant with robbery (§ 211), and alleged a firearm use (§ 12022.5, subd. (a)) and probation ineligibility (§ 1203.06). Defendant negotiated a plea bargain, the precise term of imprisonment conditioned on the result of his motion to strike the firearm use enhancement. In support of his motion to strike, defendant submitted an evaluation of the interviewing counselor, who concluded that the robbery was an isolated and impulsive act not likely to be repeated by defendant. The People argued the trial court lacked authority to entertain the motion to strike. The court denied defendant's motion, without indicating whether or not it was exercising discretion under section 1385. Pursuant to the terms of defendant's plea bargain, he was then sentenced to a five-year term of imprisonment. Defendant appealed.

The Court of Appeal affirmed, concluding the trial court lacked authority to entertain a motion under section 1385 to strike a firearm use enhancement provided for by section 12022.5. As will appear, we agree. ***209**

1. *The applicable statutes*

Section 12022.5, subdivision (a), in pertinent part provides for an enhanced punishment of three, four or five years' imprisonment for "any person who personally uses a firearm in the commission or attempted commission of a felony ...."

Section 1170.1, subdivision (d), provides that when the court imposes a prison sentence for a felony (see generally § 1170), "the court shall also impose the additional terms provided" in 16 specified sections of the Penal Code and the Health and Safety Code, including section 12022.5, "unless the additional punishment therefor is stricken pursuant to [section 1170.1,] subdivision (h)."

Section 1170.1, subdivision (h), provides that "Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided" in 13 of the 16 enhancement sections set forth in section 1170.1, subdivision (d), "if it determines that there are circumstances in mitigation of the

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additional punishment. ..."

Until 1989, section 12022.5 was one of the sections listed in section 1170.1, subdivision (h). The Legislative Counsel's Digest comment concerning the proposal to delete reference to section 12022.5 explained the amendment as follows: "Existing law relating to sentencing authorizes a court to strike the additional enhancement involving the personal use of a firearm in the commission ... of a felony .... [¶] *This bill would delete that authorization.*" (Legis. Counsel's Dig., Assem. Bill No. 566 (1989-1990 Reg. Sess.), italics added.)

Finally, section 1385, subdivision (a), permits the sentencing authority "in furtherance of justice [to] order an action to be dismissed." In its 1989 amendment to section 1170.1, subdivision (h), the Legislature deleted reference to section 12022.5, but did not alter or refer to the language of section 1385.

2. *Discussion*

(1a) Defendant contends the trial court erred in denying his motion to strike the firearm use enhancement without exercising the court's "furtherance of justice" discretion under section 1385. As defendant observes, the power to dismiss an "action" under section 1385 includes the power to dismiss or strike an enhancement. (See *People v. Fritz* (1985) 40 Cal.3d 227, 229-230 [219 Cal.Rptr. 460, 707 P.2d 833]; ***210***People v. Williams* (1981) 30 Cal.3d 470, 482-483 [179 Cal.Rptr., 637 P.2d 1029]; *People v. Burke* (1956) 47 Cal.2d 45, 50-51 [301 P.2d 241]; *People v. Dorsey* (1972) 28 Cal.App.3d 15, 18-20 [104 Cal.Rptr. 326]; cf. § 1385, subd. (b) [abrogating *Fritz*'s holding that section 1385 may be used to strike "prior serious felony" enhancements under section 667].)

The People, on the other hand, contend that by amending section 1170.1, subdivision (h), to delete the reference to section 12022.5, the Legislature expressed a clear intent to divest the courts of discretion to strike firearm use enhancements. The People suggest further that the Legislature's failure to likewise amend or refer to section 1385 was, at most, a drafting "oversight" of a kind to which we have previously referred. (See, e.g., *People v. Pieters* (1991) 52 Cal.3d 894, 900-901 [210 Cal.Rptr. 623, 694 P.2d 736]; *People v. Jackson* (1985) 37 Cal.3d 826, 837-838, and fn. 15 [276 Cal.Rptr. 918, 802 P.2d 420].)

(2) As we observed in *People v. Pieters, supra,* 52 Cal.3d at pages 898-899, "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.] (3) Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]"

Defendant cites cases holding that, absent a clear legislative direction to the contrary, a trial court retains its authority under section 1385 to strike an enhancement. (See *People v. Fritz, supra,* 40 Cal.3d at pp. 229-230; *People v. Williams, supra,* 30 Cal.3d at pp. 482-483; *People v. Tanner* (1979) 24 Cal.3d 514, 518 [156 Cal.Rptr. 450, 596 P.2d 328]; see also *People v. Sutton* (1985) 163 Cal.App.3d 438, 445-446 [209 Cal.Rptr. 536] [recognizing authority under section 1385 to strike deadly weapon use enhancement under section 12022.3, despite failure of Legislature to include such enhancements in section 1170.1, subdivision (h)]; *People v. Price* (1984) 151 Cal.App.3d 803, 818-820 [199 Cal.Rptr. 99] [same].) ***211**

(1b) But it is not necessary that the Legislature expressly refer to section 1385 in order to preclude its operation. (See *People v. Rodriguez* (1986) 42 Cal.3d 1005, 1019 [232 Cal.Rptr. 132, 728 P.2d 202] [section 1385 may be held inapplicable "in the face of [a] more specific proscription on the court's power"]; *People v. Tanner, supra,* 24 Cal.3d at pp. 519-521 [specific language of section 1203.06 barring probation contained sufficient indicia of legislative intent to preclude judicial exercise of discretion under section 1385]; see also *People v. Dillon* (1983) 34 Cal.3d 441,

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467 [194 Cal.Rptr. 390, 668 P.2d 697] [deletion of provision indicates legislative intent to change law].) As we stated in *People v. Williams, supra,* 30 Cal.3d at page 482, "Section 1385 permits dismissals in the interest of justice in any situation where the Legislature has not clearly evidenced a contrary intent."

What was the intent of the Legislature in deleting from section 1170.1, subdivision (h), the former reference to section 12022.5? As previously noted, the Legislative Counsel's comment indicated the amendment was intended to "delete" the trial courts' authorization to strike the additional enhancement involving the personal use of a firearm in the commission of a felony. Could the Legislature, in deleting reference to section 12022.5, nonetheless have intended to preserve a power to strike that enhancement under section 1385? We conclude otherwise, and a comparison of the respective standards for striking or dismissing enhancements under section 1170.1, subdivision (h), and section 1385, reinforces that conclusion.

Section 1170.1, subdivision (h), permits a court to strike the punishment for an enhancement "if it determines that there are circumstances in mitigation of the additional punishment ...." Section 1385, on the other hand, permits dismissal of actions (or enhancements) "in furtherance of justice." Are there significant differences between these standards which might have induced the Legislature to leave section 1385 in place as a vehicle for striking firearm use enhancements? It is quite difficult to conceive of any such differences.

The Judicial Council adopted extensive guidelines to assist in determining whether "circumstances in mitigation" exist to justify striking enhancements or reducing sentences to a lower term. (See Cal. Rules of Court, rule 423, and Advisory Com. Comment.) Rule 423 lists a variety of such "circumstances in mitigation," including facts relating to the crime (such as defendant's minor role or laudable motive in the offense, the small likelihood of its recurrence, the presence of duress or coercion by others, or a mistaken claim of right by the defendant), and facts relating to the defendant (including his ***212** insignificant prior record, mental or physical condition reducing his culpability, or restitution or satisfactory performance on probation or parole). Rule 423's list of mitigating circumstances mirrors many of the considerations we have stated are appropriate in determining whether to dismiss an action under section 1385 in furtherance of justice. (See *People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 505 [72 Cal.Rptr. 330, 446 P.2d 138].)

Defendant suggests that the "furtherance of justice" standard is broader than the "circumstances in mitigation" standard, and would include consideration of matters extrinsic to the offense and the offender, such as protection of the public interest. (See *People v. Orin* (1975) 13 Cal.3d 937, 944 [120 Cal.Rptr. 65, 533 P.2d 193].) Although the public interest may well favor *enhancing* a defendant's sentence by reason of his firearm use, it would be quite rare when the public interest, but not "circumstances in mitigation," would justify *striking* such an enhancement. (Such cases seemingly would be limited to situations wherein the *People* seek to strike an enhancement to enable them to rely on the defendant's gun use as an aggravating sentencing factor.) In most cases, if the public interest favors such relief, that fact readily could be deemed a "circumstance in mitigation of the additional punishment." (See, e.g., *People v. Marsh* (1984) 36 Cal.3d 134, 145, fn. 8 [202 Cal.Rptr. 92, 679 P.2d 1033] [noting for purposes of remand that striking enhancements may be justified under section 1385 by number of "mitigating circumstances" in case].)

In short, we believe that, at least in the context of striking firearm use enhancements, the two standards are essentially identical. This conclusion supports the People's position that the Legislature's deletion of section 12022.5 was intended to divest the courts of their statutory authority to strike firearm use enhancements, whether such power be exercised under section 1170.1, subdivision (h), or under section 1385.

As previously stated, in determining the legislative intent underlying a new provision or amendment, we must consider the entire scheme of law of which it is a part. The 1989 amendment to section 1170.1, subdivision (h), was included in a bill (Assem. Bill No. 566 (1989-1990 Reg. Sess.), the "McClintock Firearms" bill) that contained a variety of measures *expanding or enhancing* criminal liability for unlawful firearm use or possession. These new measures included provisions (1) restricting plea bargaining when a defendant

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personally used a firearm, (2) elevating certain firearm use or possession offenses from misdemeanor/felony ("wobbler") status to felonies, and (3) increasing the term of imprisonment for personal use of a firearm during a felony, as well as (4) the subject provision deleting section 12022.5 ***213** from section 1170.1, subdivision (h). (See Legis. Counsel's Dig., Assem. Bill No. 566 (1989-1990 Reg. Sess.).)

In light of the fact that the subject provision is included in a "package" of provisions aimed at enhancing criminal liability for unlawful firearm use, we think it highly unlikely the Legislature intended nonetheless to preserve broad judicial authority under section 1385 to strike a firearm use enhancement "in furtherance of justice."

Defendant observes that prior to the adoption of the foregoing amendment, the Attorney General's Office had urged the Legislature to modify section 1385 to preclude a court from striking a firearm use enhancement in furtherance of justice. Evidently, the Legislature did not deem an amendment to section 1385 necessary in light of its deletion of the specific reference to section 12022.5 in section 1170.1, subdivision (h). This conclusion is supported by a synopsis of Assembly Bill No. 566 prepared by the Senate Committee on the Judiciary, which synopsis referred to the prior ability of courts to strike firearm use enhancements "in the interest of justice," and commented: "This bill would provide that the enhancements shall never be stricken."

Finally, the People observe that although section 1385 provides a broad, general power to dismiss "actions" in furtherance of justice, section 1170.1, subdivision (h), provides a *specific* power to strike specified enhancements. Under well-established rules of construction, any inconsistency between the two provisions would be resolved by applying the more specific provision (and any amendments thereto). (E.g., *People v. Tanner, supra,* 24 Cal.3d at p. 521.) Moreover, to accept defendant's argument and hold that section 1385 continues to afford a broad ("furtherance of justice") basis for striking an enhancement under section 12022.5 could effectively negate the 1989 amendment to section 1170.1, subdivision (h). The "furtherance of justice" standard of section 1385 seems broad enough to permit striking an enhancement where mitigating circumstances exist, yet the Legislature in passing the 1989 amendment clearly intended to preclude the exercise of such power. As we previously indicated, a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature could not have intended. (See *People v. Tanner, supra,* 24 Cal.3d at pp. 518-520 [construing mandatory language of section 1203.06 as precluding power to strike firearm use finding and grant probation].)

For all the foregoing reasons, we conclude the trial court had no discretion to strike the firearm use enhancement under section 12022.5, and properly ***214** denied defendant's motion for such relief. The Court of Appeal's judgment is affirmed.

Mosk, J., Panelli, J., Kennard, J., Arabian, J., Baxter, J., and George, J., concurred.
Appellant's petition for a rehearing was denied January 28, 1993. ***215**

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139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128, 209 Ed. Law Rep. 290, 06 Cal. Daily Op. Serv. 4493, 2006 Daily Journal D.A.R. 6509
(Cite as: 139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128)

C

Court of Appeal, Sixth District, California.
SAN LORENZO VALLEY COMMUNITY ADVOCATES FOR RESPONSIBLE EDUCATION, Plaintiff and Appellant,
v.
SAN LORENZO VALLEY UNIFIED **SCHOOL** DISTRICT, Defendant and Respondent.
No. H028147.

May 26, 2006.

Background: Education advocates association brought action to challenge **school** district's decision to close two elementary **schools** and to transfer students from those **schools** to district's other elementary **schools**. After bench trial, the Superior Court, Santa Cruz County, No. CV147109,Irwin Joseph, J., entered judgment for district. Association appealed.

Holdings: The Court of Appeal, McAdams, J., held that:
(1) district's closure decision constituted "project" under California Environmental Quality Act (**CEQA**);
(2) substantial evidence supported determination that district's decision was exempt from **CEQA**;
(3) district's use of proceeds from local **school** facilities bond did not violate bond law provision on ballot requirements;
(4) district's expenditures did not violate bond laws;
(5) substantial evidence did not show district violated California Public Records Act (CPRA);
(6) district did not violate community involvement statutes; and
(7) association was not entitled to attorney fees.

Affirmed.

West Headnotes

|1| Environmental Law 149E 582

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek580 Preliminary Assessment or Report
149Ek582 k. Necessity. Most Cited Cases
If a project is not exempt from California Environmental Quality Act (**CEQA**) requirements-either because it does not fall within an exempt category or because an exception makes the exemption unavailable-then the agency must conduct an initial study to choose between a negative declaration or an environmental impact report (EIR). West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15063.

|2| Environmental Law 149E 589

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek589 k. Significance in General. Most Cited Cases

Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
California Environmental Quality Act (**CEQA**) excuses the preparation of an environmental impact report (EIR) and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR §§ 15063, 15070.

|3| Environmental Law 149E 690

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek690 k. Harmless Error. Most Cited Cases
Generally, an agency's failure to comply with the

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procedural requirements of the California Environmental Quality Act (**CEQA**) is prejudicial when the violation thwarts **CEQA's** goals by precluding informed decision-making and public participation. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[4] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases

Environmental Law 149E 692

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek692 k. Questions of Law and Fact. Most Cited Cases
Questions of interpretation or application of the requirements of the California Environmental Quality Act (**CEQA**) are matters of law subject to de novo review by the court. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[5] Environmental Law 149E 595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
School district's decision to close two elementary **schools** and to transfer students from those **schools** to district's other elementary **schools** constituted a "project" under the California Environmental Quality Act (**CEQA**); possibility of environmental effects from closure itself, although not high, could not be rejected, and transfer of students could change bus routes, alter traffic patterns, increase traffic congestion and parking problems, with attendant environmental effects. West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR § 15061.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 832 et seq.; 9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:186; Cal. Jur. 3d, Pollution and Conservation Laws, § 511 et seq.; Cal. Civil Practice (Thomson/West 2003) Environmental Law, § 8:7.

[6] Environmental Law 149E 587

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek587 k. Major Government Action. Most Cited Cases
To maximize environmental protection, the concept of a "project" subject to the California Environmental Quality Act (**CEQA**) is broadly defined. West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR §§ 15002, 15378.

[7] Environmental Law 149E 692

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek692 k. Questions of Law and Fact. Most Cited Cases
Where the facts in the record are undisputed, the court decides as a matter of law whether the challenged activity falls within the definition of a "project" under the California Environmental Quality Act (**CEQA**). West's Ann.Cal.Pub.Res.Code § 21065; 14 CCR §§ 15002, 15378.

[8] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Each class of categorical exemptions from California Environmental Quality Act (**CEQA**) embodies a finding by the State Resources Agency that the project will not have a significant environmental impact. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§

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139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128, 209 Ed. Law Rep. 290, 06 Cal. Daily Op. Serv. 4493, 2006 Daily Journal D.A.R. 6509
(Cite as: 139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128)

15061, 15301-15333.

[9] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Under California Environmental Quality Act (**CEQA**) guideline providing that categorical exemptions shall not be used for activity where there is reasonable possibility that activity will have significant effect on environment due to unusual circumstances, term "unusual circumstances" refers to feature of project that distinguishes it from others in exempt class. 14 CCR § 15300.2(c).

[10] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
The scope of an exemption from California Environmental Quality Act (**CEQA**) may be analyzed as a question of statutory interpretation and thus subject to independent review. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[11] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
Substantial evidence test governs judicial review of agency's factual determination that a project falls within a categorical exemption from California Environmental Quality Act (**CEQA**). West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[12] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Because California Environmental Quality Act (**CEQA**) exemptions operate as exceptions to **CEQA**, they are narrowly construed. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[13] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
If a procedural violation of California Environmental Quality Act (**CEQA**) is shown, the substantial evidence prong of the statutory standard of judicial review does not come into play. West's Ann.Cal.Pub.Res.Code § 21168.5.

[14] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
In granting an exemption from California Environmental Quality Act (**CEQA**), the agency must proceed in the manner prescribed by law, i.e., **CEQA** statutes, **CEQA** Guidelines, and judicial gloss on both, lest it be charged with abusing its discretion. West's Ann.Cal.Pub.Res.Code §§ 21080, 21168.5; 14 CCR §§ 15061, 15301-15333.

[15] Environmental Law 149E 592

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149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
In determining whether a project is exempt from California Environmental Quality Act (**CEQA**), the agency should proceed with considered awareness of purposes and policy that underlie **CEQA**, and should not undertake mechanical application of exemption criteria in reaching its decision. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[16] Environmental Law 149E 610

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek610 k. Time Requirements. Most Cited Cases
In California Environmental Quality Act (**CEQA**) cases where a negative declaration or an environmental impact report (EIR) is necessary, environmental issues must be considered and resolved before a project is approved, but preliminary determinations of applicability of **CEQA** are not formalized until after project has been approved. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15062.

[17] Environmental Law 149E 594

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek594 k. Negative Declaration; Statement of Reasons. Most Cited Cases
While California Environmental Quality Act (**CEQA**) guideline expressly requires that agency render a written determination whether project requires environmental impact report (EIR); there is no requirement that agency put its decision that project is exempt from **CEQA** in writing. 14 CCR § 15362.

[18] Environmental Law 149E 596

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek596 k. Proceedings. Most Cited Cases
Although California Environmental Quality Act (**CEQA**) provides for public comment on a negative declaration and an environmental impact report (EIR), **CEQA** does not provide for a public comment period before an agency decides a project is exempt. West's Ann.Cal.Pub.Res.Code § 21092.

[19] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
Where a project is categorically exempt from California Environmental Quality Act (**CEQA**), it is not subject to **CEQA** requirements and may be implemented without any **CEQA** compliance whatsoever. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[20] Environmental Law 149E 595(2)

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek595 Particular Projects
149Ek595(2) k. Land Use in General. Most Cited Cases
Substantial evidence contained in **school** closure committee's report supported determination that **school** district's decision to close two elementary **schools** and to transfer students from those **schools** to district's other elementary **schools** was categorically exempt from California Environmental Quality Act (

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CEQA); additional student populations and additional classrooms in receptor **schools** fell within **CEQA** exemption guideline, and evidence did not support applicability of exception to exemption for project's potential for significant adverse environmental impacts from mold, geologic hazards, septic failure, or traffic-related issues. West's Ann.Cal.Pub.Res.Code § 21080.18; 14 CCR §§ 15061, 15314.

[21] Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
There must be substantial evidence, such as that found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold, that the project is within category exemption from California Environmental Quality Act (**CEQA**). West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15301-15333.

[22] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
When called upon to review an agency's decision that a project is exempt from California Environmental Quality Act (**CEQA**), the court's task is to determine whether, as a matter of law, the activity meets the definition of a categorically exempt project; to do this, court applies de novo standard of review, not substantial evidence standard. West's Ann.Cal.Pub.Res.Code §§ 21080, 21168.5; 14 CCR § 15061.

[23] Environmental Law 149E 592

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek584 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements
149Ek592 k. Categorical Exclusion; Exemptions in General. Most Cited Cases
For California Environmental Quality Act (**CEQA**) exemption for transfer of students from one public **school** to another public **school** where the addition does not increase original student capacity by more than 25 percent or 10 classrooms, "student capacity" means the number of students that can be accommodated physically at the receptor **school**. West's Ann.Cal.Pub.Res.Code § 21080.18; 14 CCR § 15314.

[24] Environmental Law 149E 614

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek614 k. Presumptions, Inferences, and Burden of Proof. Most Cited Cases

Environmental Law 149E 615

149E Environmental Law
149EXII Assessments and Impact Statements
149Ek612 Evidence
149Ek615 k. Weight and Sufficiency. Most Cited Cases
At the administrative level, once an agency determines, based on substantial evidence in the record, that the project falls within a categorical exemption from California Environmental Quality Act (**CEQA**), the burden shifts to the challenging party to produce substantial evidence that one of the exceptions to categorical exemption applies. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15300.2(c), 15301-15333.

[25] Environmental Law 149E 689

149E Environmental Law
149EXIII Judicial Review or Intervention
149Ek677 Scope of Inquiry on Review of Administrative Decision
149Ek689 k. Assessments and Impact Statements. Most Cited Cases
A party challenging an agency's decision that a project is exempt from California Environmental Quality Act (**CEQA**) must produce substantial evidence that the

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project has the potential for a substantial adverse environmental impact. West's Ann.Cal.Pub.Res.Code § 21080; 14 CCR §§ 15061, 15300.2(c), 15301-15333.

[26] **Schools** 345 ⚿97(1)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(1) k. Authority to Issue Bonds in General. Most Cited Cases
Generally, **school** bond financing is restricted to projects of a capital or permanent character. West's Ann.Cal. Const. Art. 13A, § 1(b)(3), Art. 16, § 18(b); West's Ann.Cal.Educ.Code § 15146(b).

[27] **Schools** 345 ⚿97(4)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(4) k. Submission of Question of Issue to Popular Vote. Most Cited Cases
Elements that made up relationship between **school** district and electorate arising from **school** bond measure were authorizing legislation, district's formal resolution to submit issue to the electorate, the ballot proposition itself, and assent or ratification by the electors. West's Ann.Cal.Educ.Code §§ 15100, 15122.

[28] **Schools** 345 ⚿97(5)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by **School** District. Most Cited Cases
In determining whether **school** district violated bond law by using proceeds from local **school** facilities bond issue approved by local voters for closing two elementary **schools** and transferring students from those **schools** to district's other elementary **schools**, ballot arguments on bond measure were not part of analysis. West's Ann.Cal.Educ.Code § 15100.

[29] **Schools** 345 ⚿97(4)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(4) k. Submission of Question of Issue to Popular Vote. Most Cited Cases
School district's expenditures of proceeds from local **school** facilities bond issue approved by local voters did not violate statute providing that ballot for project funded by bonds requiring state matching funds must contain statement that project was subject to state approval, even though purpose of measure was to make district eligible to receive state matching funds; neither measure nor any other evidence suggested bond-financed projects required state matching funds. West's Ann.Cal.Educ.Code § 15122.5.

[30] **Schools** 345 ⚿90

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k90 k. Power to Incur Indebtedness and Expenditures. Most Cited Cases
Permissible administrative costs under **school** bond measure approved by voters included salaries and associated training costs of **school** district personnel acting as construction project administrators for project to close two elementary **schools** and to transfer students from those **schools** to district's other elementary **schools**. West's Ann.Cal. Const. Art. 13A, § 1(b)(3)(A); West's Ann.Cal.Educ.Code § 15100; West's Ann.Cal.Gov.Code § 16727.

[31] **Schools** 345 ⚿97(5)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by **School** District. Most Cited Cases
School district's use of bond funds for printing expenses and attorney fees incurred in preparing the bond did not violate statutes on permitted use of proceeds of sale of bonds. West's Ann.Cal.Educ.Code

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§ 15145; West's Ann.Cal.Gov.Code § 16727.

[32] **Schools 345** 97(5)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by **School** District. Most Cited Cases
School district's use of bond funds for deferred maintenance and repair of septic tank on certain campus did not violate state bond laws, in absence of showing that district paid for current maintenance with deferred maintenance bond funds, or showing that district may improper transfers within its accounts. West's Ann.Cal. Const. Art. 13D, § 2; West's Ann.Cal.Educ.Code §§ 15100, 17582.

[33] **Schools 345** 97(5)

345 **Schools**
345II Public **Schools**
345II(G) Fiscal Matters
345k97 Bonds
345k97(5) k. Sale or Other Disposition of Bonds by **School** District. Most Cited Cases
School district's use of bond funds for demographic and geo-coding studies, consultants, mold reports, California Environmental Quality Act (**CEQA**) study, and moving and leasing of portable classrooms, in connection with decision to close two elementary **schools** and to transfer students to district's other elementary **schools**, did not violate bond statutes. West's Ann.Cal.Educ.Code §§ 17357, 17404; West's Ann.Cal.Gov.Code § 16727; West's Ann.Cal.Pub.Res.Code § 21000 et seq.

[34] **Records 326** 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
California Public Records Act (CPRA) was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies. West's Ann.Cal.Gov.Code § 6250 et seq.

[35] **Records 326** 50

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k50 k. In General; Freedom of Information Laws in General. Most Cited Cases
California Public Records Act (CPRA) embodies a strong policy in favor of disclosure of public records. West's Ann.Cal.Gov.Code § 6250 et seq.

[36] **Records 326** 52

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k52 k. Persons Entitled to Disclosure; Interest or Purpose. Most Cited Cases

Records 326 54

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k53 Matters Subject to Disclosure; Exemptions
326k54 k. In General. Most Cited Cases
Unless exempted by the California Public Records Act (CPRA), all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity. West's Ann.Cal.Gov.Code §§ 6254, 6255.

[37] **Records 326** 63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in

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General. Most Cited Cases
An order of the trial court under the California Public Records Act (CPRA), which either directs disclosure of records by a public official or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ. West's Ann.Cal.Gov.Code §§ 6258, 6259.

[38] Records 326 ⚿63

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
Standard for appellate review of an order under the California Public Records Act (CPRA) is an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence. West's Ann.Cal.Gov.Code §§ 6258, 6259.

[39] Counties 104 ⚿52

104 Counties
104II Government
104II(C) County Board
104k52 k. Meetings. Most Cited Cases

Municipal Corporations 268 ⚿92

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(A) Meetings, Rules, and Proceedings in General
268k92 k. Rules of Procedure and Conduct of Business. Most Cited Cases

Schools 345 ⚿57

345 **Schools**
345II Public **Schools**
345II(C) Government, Officers, and District Meetings
345k51 District Boards
345k57 k. Meetings. Most Cited Cases
Ralph M. Brown Open Meeting Act provides for open meetings for local legislative bodies such as city councils, boards of supervisors, and **school** boards. West's Ann.Cal.Gov.Code § 54950 et seq.

[40] Administrative Law and Procedure 15A ⚿124

15A Administrative Law and Procedure
15AII Administrative Agencies, Officers and Agents
15Ak124 k. Meetings in General. Most Cited Cases
A major objective of the Ralph M. Brown Open Meeting Act is to facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic process by secret legislation by public bodies. West's Ann.Cal.Gov.Code § 54950.

[41] Administrative Law and Procedure 15A ⚿816

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(F) Determination
15Ak816 k. Annulment, Vacation or Setting Aside of Administrative Decision. Most Cited Cases
Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Ralph M. Brown Open Meeting Act violations will not necessarily invalidate a decision, in the absence of a showing of prejudice. West's Ann.Cal.Gov.Code § 54950 et seq.

[42] Records 326 ⚿62

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k62 k. In General; Request and Compliance. Most Cited Cases
Substantial evidence did not show **school** district

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violated California Public Records Act (CPRA) concerning requests for records connected to district's decision to close two elementary **schools** and to transfer students to district's other elementary **schools**; evidence showed only that district personnel were unaware of e-mails requesting documents, requesting attorney's failure to specify certain files, and district superintendent's testimony that she had never seen requested geologic report but that it "likely" was in certain location. West's Ann.Cal.Gov.Code § 6250 et seq.

|43| **Records 326 ⚿65**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k65 k. Evidence and Burden of Proof. Most Cited Cases
In hearing to determine whether **school** district violated California Public Records Act (CPRA) by failing to provide education advocates association with records concerning decision to close two **schools**, testimony of individual resident who also alleged CPRA violations was irrelevant, where resident did not purport to act as member of association, and his testimony did not address any collateral matter. West's Ann.Cal.Gov.Code § 6258.

|44| **Appeal and Error 30 ⚿970(2)**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
Generally, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence.

|45| **Appeal and Error 30 ⚿970(2)**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
An appellate court examines for abuse of discretion a decision on admissibility that turns on the relevance of the evidence in question.

|46| **Witnesses 410 ⚿319**

410 Witnesses
410IV Credibility and Impeachment
410IV(A) In General
410k319 k. Right to Impeach Witness in General. Most Cited Cases
Though not directly germane, a matter collateral to an issue in the action may nevertheless be relevant to the credibility of a witness who presents evidence on an issue, but the admissibility of such collateral matter lies within the trial court's discretion. West's Ann.Cal.Evid.Code § 210.

|47| **Records 326 ⚿63**

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k63 k. Judicial Enforcement in General. Most Cited Cases
(Formerly 118Ak300)
California Public Records Act (CPRA) provision authorizing plaintiff to enforce his or her right to inspect or to receive a copy of any public record contemplates a declaratory relief proceeding commenced only by the individual or entity seeking disclosure of public records. West's Ann.Cal.Gov.Code § 6258.

|48| **Schools 345 ⚿74**

345 **Schools**
345II Public **Schools**
345II(D) District Property
345k66 **School** Buildings
345k74 k. Sale or Other Disposition. Most Cited Cases
School district's superintendent's **school** closure committee, appointed prior to decision to close two

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elementary **schools** in district, did not violate community involvement statutes; statutes did not dictate what information must be provided to advisory committees, district made good faith attempt to provide committee with information that was complete and accurate, and no prejudice was demonstrated from absence of any pertinent reports. West's Ann.Cal.Educ.Code §§ 17387-17391.

[49] Appeal and Error 30 ⚿970(2)

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k970 Reception of Evidence
30k970(2) k. Rulings on Admissibility of Evidence in General. Most Cited Cases
A trial court's exercise of discretion in admitting or excluding evidence will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. West's Ann.Cal.Evid.Code §§ 353, 354.

[50] Trial 388 ⚿55

388 Trial
388IV Reception of Evidence
388IV(A) Introduction, Offer, and Admission of Evidence in General
388k55 k. Exclusion of Improper Evidence. Most Cited Cases

Trial 388 ⚿105(1)

388 Trial
388IV Reception of Evidence
388IV(C) Objections, Motions to Strike Out, and Exceptions
388k105 Effect of Failure to Object or Except
388k105(1) k. In General. Most Cited Cases
Where questions are asked which are improper, the court acts within the scope of its duty in refusing to allow them to be answered, even though no objection is made.

[51] Evidence 157 ⚿505

157 Evidence
157XII Opinion Evidence
157XII(B) Subjects of Expert Testimony
157k505 k. Matters of Opinion or Facts. Most Cited Cases
In bench trial of association's challenge to **school** district's use of bond funds, testimony of district's bond counsel about propriety of bond expenditures was admissible, where testimony was his percipient testimony rather that his conclusions of law.

[52] Costs 102 ⚿194.42

102 Costs
102VIII Attorney Fees
102k194.42 k. Public Interest and Substantial Benefit Doctrine; Private Attorney General. Most Cited Cases
Education advocates association, that unsuccessfully appealed adverse judgment in its action to challenge **school** district's decision to close two elementary **schools** and to transfer students from those **schools** to district's other elementary **schools**, was not prevailing party entitled to attorney fees under private attorney general doctrine. West's Ann.Cal.C.C.P. § 1021.5.

[53] Records 326 ⚿68

326 Records
326II Public Access
326II(B) General Statutory Disclosure Requirements
326k61 Proceedings for Disclosure
326k68 k. Costs and Fees. Most Cited Cases
Plaintiff prevails within meaning of California Public Records Act (CPRA) fee provision when he or she files action which results in defendant releasing copy of previously withheld document; conversely, plaintiff has not prevailed where substantial evidence supported finding that litigation did not cause agency to disclose any of documents ultimately made available. West's Ann.Cal.Gov.Code § 6259.
****135** Dawson, Passafuime, Bowden & Martinez, Gerald Bowden, Kathleen Morgan-Martinez, Scotts Valley, for Appellant.

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139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128, 209 Ed. Law Rep. 290, 06 Cal. Daily Op. Serv. 4493, 2006 Daily Journal D.A.R. 6509
(Cite as: 139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128)

Burton, Volkmann & Schmal, Timothy R. Volkmann, Santa Cruz, John P. Loringer, for Respondents.

McADAMS, J.

***1368** This action arises out of a decision by the defendant **school** district to close two elementary **schools** in the **San Lorenzo** Valley area of Santa Cruz County. Plaintiff seeks to overturn the closure decision, alleging that it violates various state laws, including the California Environmental Quality Act, the Public Records Act, the Brown Act, provisions of the Education Code, and **school** bond financing laws. The trial court rejected all of the plaintiff's contentions. We shall affirm.

BACKGROUND

This suit was brought by plaintiff and appellant **San Lorenzo** Valley Community Advocates for Responsible Education, an unincorporated association (SLV CARE). SLV CARE challenges a **school** closure decision made by defendant and respondent **San Lorenzo** Valley Unified **School** District (the District). At issue is the District's April 2003 decision to close two of its elementary **schools** and to transfer students from those **schools** to the District's other two elementary **school** campuses. Plaintiff SLV CARE challenges that decision on various legal grounds.

Factual Summary

The District made the challenged decision in response to declining enrollment and fiscal difficulties. The initial decision to close one or more **schools** was approved by District's Board of Trustees (Board) in December 2002. From December 2002 to June 2003, the District entertained public comment on the issue at its regular and special board meetings.

January 2003-March 2003: First Advisory Committee

The District also convened a task force-called the Superintendent's **School** Closure Committee (SSCC)-to consider the **school** closure question ***1369** and make a recommendation to the Board. The SSCC was composed of 17 people representing all of the affected **schools**; task force ****136** members included seven parents, four teachers, four classified employees, and two community members.

Between mid-January and mid-March 2003, the SSCC met formally eight times; ad hoc subcommittees also met separately. In mid-March 2003, after considering an extensive body of information about the **schools**, the SSCC recommended the closure of Redwood and Quail Hollow Elementary **Schools**. To consolidate student populations at the north end of the **San Lorenzo** Valley, in Boulder Creek, Redwood students would be transferred to Boulder Creek Elementary **School** (BCE). At the south end of the valley, in Felton, Quail Hollow students would be transferred to **San Lorenzo** Elementary **School** (SLE).

April 2003: Closure Decision

At a public meeting held on April 8, 2003, the District's Board considered and ultimately adopted the recommendation of the SSCC. Thus, as to the north valley elementary **schools**, the Board voted to close Redwood, and keep BCE open. As for the south valley, the Board voted to close Quail Hollow and keep SLE open.

In May 2003, a community group proposed private fundraising to keep Redwood Elementary **School** open for the upcoming **school** year. The Board rejected that proposal the following month.

June 2003-October 2003: Requests for Public Records

Starting in June 2003, various written requests for public records relating to the closure decision were made by attorney Steven A. Greenburg, acting as counsel for plaintiff SLV CARE.

In July 2003, the District forwarded more than 400 pages of records to Greenburg. The following month, acting through its counsel, the District provided Greenburg with additional documents. After October 2003, document requests were addressed through formal discovery.

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An additional request for documents was e-mailed to the District by **San Lorenzo** Valley resident David Churchill, with a copy to attorney Greenburg. The principal subject of Churchill's request was the District's use of money from Measure S, a multimillion-dollar **school** facilities bond issue that had been approved by local voters in 2000.

***1370 June 2003-October 2003: Consideration of Environmental Impacts**

In early August 2003, in response to public concerns-and notwithstanding its receipt of earlier legal advice that the **school** closure decision was exempt under the California Environmental Quality Act (**CEQA**)-the District retained consultants to evaluate possible environmental impacts, including traffic. The District retained environmental consultant Stephen Graves & Associates (Graves). The District also hired traffic consultant Keith Higgins & Associates (Higgins).

Graves, the environmental consultant, confirmed that the **school** consolidation decision was exempt from **CEQA**. On August 19, 2003, the District formally approved the filing of a notice of exemption from **CEQA**. Despite the exemption, the District authorized Graves to prepare an initial study of environmental effects. The initial study concluded that the **school** closures and transfers would not create any significant environmental impacts, and that potential traffic impacts, though insignificant, could be minimized with recommended project conditions. After public comment and response, Graves stood by the conclusions in the initial study.

As for traffic, by June 2003, the Public Works Department of Santa Cruz County ****137** had advised the Board of Supervisors of the need for an ordinance to reroute traffic in the **San Lorenzo** Valley following the **school** closure decision. The initial study by environmental consultant Graves incorporated a report by traffic consultant Higgins. That report identified anticipated traffic and parking problems resulting from the **school** consolidations. Nevertheless, the traffic report concluded, mitigation measures were not mandatory because those impacts would not exceed historic levels. With respect to BCE, however, the report noted that the District was "planning on implementing several strategies to improve traffic and parking operations" as described in the report. The District implemented those strategies.

By October 2003, having considered the issues, the District was prepared to approve the adoption of a negative declaration, thus confirming the absence of significant environmental impacts. No environmental impact report was prepared.

Fall 2003: Second Advisory Committee

In August 2003, the District's Board voted to convene a Surplus Property Advisory Committee (SPAC). At the same time, it approved an application form for membership on the committee. In October 2003, the District's Board approved the proposed roster of SPAC members. The Board meeting minutes of November 4, 2003, state: "The Board has declared the District Office and ***1371** Redwood Elementary **School** surplus property as a result of the Board decision to close Redwood Elementary and Quail Hollow Elementary **Schools** and move the District Office from the Felton site to Quail Hollow." Those minutes further state that the purpose of the public hearing on the SPAC was "to provide input to the committee for the purpose of determining acceptable uses of these properties." The SPAC met three times, from late October to mid-November 2003. In December 2003, the SPAC presented its recommendations for Redwood Elementary and the District Office, which included commercial, community, and educational uses.

Procedural History

Plaintiff SLV CARE brought this action, challenging the District's closure decision. As amended in August 2004, the complaint states five causes of action, all asserting statutory violations by the District. The first cause of action is for breach of statutory duties arising out of **school** bond financing laws. The second cause of action alleges **CEQA** violations. The third cause of action asserts breach of Education Code mandates for community input on certain decisions. The final two causes of action allege violation of the California Public Records Act, which requires disclosure of public records, and of the Brown Act, which compels open public meetings.

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The court conducted a six-day bench trial, which started on August 30, 2004, and concluded on September 8, 2004. At the close of evidence and argument, the court took the matter under submission. It issued a statement of decision on September 13, 2004, finding for the District on all claims.

In November 2004, the court entered judgment for the District. This appeal by SLV CARE followed.

CONTENTIONS

On appeal, SLV CARE renews its trial court claims that the District violated **CEQA**, bond financing laws, the Public Records Act, the Brown Act, and the Education Code. In addition, SLV CARE asserts that the trial court made certain ****138** erroneous evidentiary rulings and that it demonstrated bias. Appellant SLV CARE also seeks an award of attorney fees and costs. The District opposes all of appellant's arguments.

DISCUSSION

We consider each issue in turn, beginning with the claims of statutory violation.

*1372 I. CEQA

SLV CARE asserts that the District violated **CEQA**. To establish the proper framework for assessing that contention, we begin by summarizing the governing legal principles.

A. General Principles

The California Environmental Quality Act is codified at Division 13 of the Public Resources Code, beginning with section 21000.[FN1] As an aid to carrying out the statute, the State Resources Agency has issued a set of regulations, called Guidelines for the California Environmental Quality Act (Guidelines).[FN2]

FN1. In this section of the opinion (I), which discusses **CEQA**, further unspecified statutory references are to the Public Resources Code.

FN2. The Guidelines are contained in the California Code of Regulations, Title 14, Division 6, Chapter 3, starting at section 15000. Further unspecified guideline references are to those regulations.

CEQA embodies our state's policy that "the long-term protection of the environment ... shall be the guiding criterion in public decisions." (§ 21001, subd. (d). See *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112, 62 Cal.Rptr.2d 612.) As this court has observed, "the overriding purpose of **CEQA** is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117, 104 Cal.Rptr.2d 326.) Together, the statute and accompanying regulatory guidelines protect a variety of environmental values. Human health is among them. (See Guidelines, § 15065, subd. (a)(4).)

1. The Three-Step CEQA Process

Consistent with California's strong environmental policy, whenever the approval of a project is at issue, the statute and regulations "have established a three-tiered process to ensure that public agencies inform their decisions with environmental considerations." (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 112, 62 Cal.Rptr.2d 612. See also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1371, 43 Cal.Rptr.2d 170.)

*a. Threshold Determination of **CEQA's** Applicability*

"The first tier is jurisdictional, requiring that an agency conduct a preliminary review in order to determine whether **CEQA** applies to a proposed activity. (Guidelines, §§ 15060, 15061.)" ***1373**(*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 112, 62 Cal.Rptr.2d 612.) **CEQA** applies if the activity is a "project" under the statutory definition, unless the project is exempt. (See §§ 21065, 21080.) "If the agency finds the project is exempt from **CEQA** under any of the stated exemptions, no further environmental review is necessary." (*Davidon Homes*, p. 113, 62

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Cal.Rptr.2d 612.) In such cases, the agency may file a notice of **CEQA** exemption, if it chooses to do so. (Guidelines, § 15062, subd. (a); see ****139***Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171, 109 Cal.Rptr.2d 504.)

[1] If the project is not exempt-either because it does not fall within an exempt category or because an exception makes the exemption unavailable-then the agency must proceed to the second tier and conduct an initial study. (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 792, 124 Cal.Rptr.2d 731; see Guidelines, § 15063.)

b. Initial Study

The second tier of the process, the initial study, serves several purposes. One purpose is to inform the choice between a negative declaration and an environmental impact report (EIR). (Guidelines, § 15063, subd. (c)(1); *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1180, 31 Cal.Rptr.3d 901.) Another of the initial study's purposes is to eliminate unnecessary environmental impact reports. (Guidelines, § 15063, subd. (c)(7).)

[2] " **CEQA** excuses the preparation of an EIR and allows the use of a negative declaration when an initial study shows that there is no substantial evidence that the project may have a significant effect on the environment." (*San Bernardino Valley Audubon Society v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 389-390, 83 Cal.Rptr.2d 836, citing Guidelines, § 15070. See also Pub. Resources Code, §§ 21064, 21080, subd. (c).) In certain situations where a straightforward negative declaration is not appropriate, the agency may permit the use of a mitigated negative declaration. (See § 21064.5; Guidelines, § 15064, subd. (f)(2); *San Bernardino Valley Audubon Society*, at p. 390, 83 Cal.Rptr.2d 836.)

c. Environmental Impact Report

If the project does not qualify for a negative declaration, "the third step in the process is to prepare a full environmental impact report...." (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 113, 62 Cal.Rptr.2d 612, citing §§ 21100 and 21151, and Guidelines, §§ 15063, subd. (b)(1) & 15080; *Gentry v. City of Murrieta, supra*, 36 Cal.App.4th at p. 1372, 43 Cal.Rptr.2d 170.)

The California Supreme Court has "repeatedly recognized that the EIR is the 'heart of **CEQA**.' " ***1374**(*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal.Rptr.2d 231, 864 P.2d 502 (*Laurel Heights II*).) As the court observed more than three decades ago, "since the preparation of an EIR is the key to environmental protection under **CEQA**, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 118 Cal.Rptr. 34, 529 P.2d 66, criticized on another point in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) Other cases have since confirmed the statutory preference for resolving doubts in favor of an EIR. (See, e.g., *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703, 7 Cal.Rptr.3d 868; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905, 60 Cal.Rptr.2d 821.)

2. Timing

"Choosing the precise time for **CEQA** compliance involves a balancing of competing factors. EIRs and negative declarations****140** should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (Guidelines, § 15004, subd. (b). See also, e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395, 253 Cal.Rptr. 426, 764 P.2d 278.) As a general rule, "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of **CEQA** compliance." (Guidelines, § 15004, subd. (b)(2).)

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When a project is exempt, however, a somewhat different timing rule applies. "When a public agency decides that a project is exempt from **CEQA** ..., the agency may file a notice of exemption. The notice shall be filed, if at all, *after* approval of the project." (Guidelines, § 15062, subd. (a), italics added.) "A notice of exemption may be filled out and may accompany the project application through the approval process" but it "shall not be filed ... until the project has been approved." (*Id.*, subd. (b). See also Guidelines, § 15061, subd. (d).)

3. Judicial Review

At issue here are **CEQA** challenges to a quasi-legislative action taken by the District, in a procedural setting where no administrative hearing was required. (See *1375*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 74, fn. 3, 118 Cal.Rptr. 34, 529 P.2d 66; *City of South Gate v. Los Angeles Unified* **School** *Dist.* (1986) 184 Cal.App.3d 1416, 1423-1424, 229 Cal.Rptr. 568 (*South Gate*); *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 835-836, 171 Cal.Rptr. 753.) Judicial review of such challenges is governed by well-established rules.

a. Prejudicial Abuse of Discretion

[3] Where a party seeks judicial review of a quasi-legislative decision "on the grounds of noncompliance with [**CEQA**], the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (§ 21168.5. See also, e.g., *No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 88, 118 Cal.Rptr. 34, 529 P.2d 66; *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1182, 31 Cal.Rptr.3d 901.) Generally speaking, an agency's failure to comply with the procedural requirements of **CEQA** is prejudicial when the violation thwarts the Act's goals by precluding informed decision-making and public participation. (See, e.g., *Lighthouse Field Beach Rescue,* at pp. 1182, 1202, 31 Cal.Rptr.3d 901 [deficient initial study]; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198, 22 Cal.Rptr.3d 203 [deficient EIR].)

"The determinations that an agency makes during a preliminary review are subject to judicial review under the abuse of discretion standard contained in section 21168.5." (*Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 636, 10 Cal.Rptr.3d 560; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 821, 17 Cal.Rptr.2d 766, disapproved on another point in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 576, fn. 6, 38 Cal.Rptr.2d 139, 888 P.2d 1268.)

**141 *b. Independent Review*

[4] The foregoing review standard applies to case-specific issues of compliance with the law and sufficiency of the evidence. But "questions of interpretation or application of the requirements of **CEQA** are matters of law." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 118, 104 Cal.Rptr.2d 326. Accord, *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at p. 1207, 22 Cal.Rptr.3d 203.) Thus, for example, interpreting the scope of a **CEQA** exemption presents "a question of law, subject to de novo review by this court." (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251, 89 Cal.Rptr.2d 233. Accord, *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731; see also, e.g., *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192, 61 Cal.Rptr.2d 447.)

*1376 B. Application

Addressing the first tier of the analysis, we consider whether **CEQA** applies to the **school** consolidation decision at issue here. That inquiry involves two threshold questions: Is this a project under **CEQA**? If so, is it exempt?

1. The District's School Closure Decision Is a Project Under CEQA.

[5] At the threshold, for **CEQA** to apply, the activity

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or decision at issue must constitute a "project" under the statute. **CEQA** applies only to "discretionary *projects* proposed to be carried out or approved by public agencies ...." (§ 21080, subd. (a), italics added.) "If there was no 'project,' there was no occasion to prepare either a negative declaration or an EIR." (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 663, 124 Cal.Rptr. 635. Accord, *Prentiss v. Board of Education* (1980) 111 Cal.App.3d 847, 852, 169 Cal.Rptr. 5 (*Prentiss*), questioned on another point in *Fullerton Joint Union High **School** Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 796, 187 Cal.Rptr. 398, 654 P.2d 168, fn. 16 (*Fullerton*).)

a. Definition

"A 'project' is an activity subject to **CEQA**." (Guidelines, § 15002, subd. (d).) As relevant here, "project" means activity by a public agency that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment ...." (Pub. Resources Code, § 21065, subd. (a).) [FN3] "The word 'may' in this context connotes a reasonable possibility." (*Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 753, 272 Cal.Rptr. 83.) " 'Environment' means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.)

> FN3. Section 21065 provides in full as follows: " 'Project' means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: [¶] (a) An activity directly undertaken by any public agency. [¶] (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. [¶] (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

***1377** The statutory definition of a **CEQA** project "is amplified in the Guidelines," ****142** which clarify that a project means " '*the whole of an action,* which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a), italics added.)" (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 637, 10 Cal.Rptr.3d 560. See also, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.)

[6] To maximize environmental protection, the concept of a "project" is broadly defined under **CEQA**. (*Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.)

b. Judicial Determination

"Exactly what constitutes a project within the meaning of **CEQA** is a question which has been addressed by California courts on several occasions since the enactment of **CEQA** in 1970." (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified **School** Dist.* (1992) 9 Cal.App.4th 464, 472, 11 Cal.Rptr.2d 792.)

As articulated in recent case authority, there is a two-pronged test for determining whether a public agency's action qualifies as a project under **CEQA**: The first consideration is "whether there has been an 'activity directly undertaken by any public agency.' (§ 21065, subd. (a).)" (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 639, 10 Cal.Rptr.3d 560.) "The second test for a 'project' is whether the activities have a 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a).)" (*Ibid.*)

[7] Where the facts in the record are undisputed, the court decides as a matter of law whether the challenged activity falls within **CEQA's** definition of a project. (*Fullerton, supra,* 32 Cal.3d at pp. 794-795,

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187 Cal.Rptr. 398, 654 P.2d 168; *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 637, 10 Cal.Rptr.3d 560.)

*c. **School** Closures and Student Transfers*

Several published appellate cases have addressed the issue of **CEQA**'s applicability to decisions involving **school** closures, the transfer of students between **schools**, or both.

In *Prentiss,* a case decided in 1980, the court held that a **school** closure decision was not a project under **CEQA**. ***1378**(*Prentiss, supra,* 111 Cal.App.3d at p. 851, 169 Cal.Rptr. 5.) The *Prentiss* court reasoned that the **school** district's decision to close an elementary **school** was not "a necessary step in the development of property for a new and different use" and thus was not subject to **CEQA**. (*Id.* at p. 853, 169 Cal.Rptr. 5.) But the California Supreme Court has since questioned that holding in a plurality opinion. (See *Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168. But see *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918, 13 Cal.Rptr.2d 245, 838 P.2d 1198 [criticizing *Fullerton* on another point, and further noting that as a plurality opinion, it "lacks authority as precedent"].) As the plurality said in *Fullerton:* "The decision in *Prentiss* [ ], that the closure of a **school** is not a 'project' because the **school** board had not decided whether to put the land to a different use, is questionable. It may be unlikely that the closure of a single elementary ****143 school** would have a significant environmental impact apart from its effect on the use of the property-the **school** board in *Prentiss* filed a negative declaration-but the possibility cannot be rejected categorically." (*Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168.)

In a 1986 case, *South Gate,* the challenged action was the transfer of students from one campus to another, though without a **school** closure. (*South Gate, supra,* 184 Cal.App.3d at pp. 1423-1424, 229 Cal.Rptr. 568.) At issue in *South Gate* was the **school** district's use of a pupil attendance boundary adjustment, a mechanism used to "distribute student population over the District so as to relieve **school** overcrowding." (*Id.* at p. 1420, 229 Cal.Rptr. 568.) In concluding that **CEQA** did not apply to the transfer, the *South Gate* court conflated the two threshold concepts-project and exemption. As the court put it: "The District's action creating the boundary adjustment is not a project requiring an EIR because it is exempt under **CEQA** guidelines...." (*Id.* at p. 1423, 229 Cal.Rptr. 568.)

A 1989 case, *East Peninsula,* involved the decision to close a high **school** and transfer its students to other campuses. (*East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified **School** Dist.* (1989) 210 Cal.App.3d 155, 258 Cal.Rptr. 147 (*East Peninsula*).) Again, both threshold issues were at issue: "whether the [**school**] closure [ ] and transfer of students is a project subject to **CEQA**" and "whether such action is statutorily exempt...." (*Id.* at p. 165, fn. 5, 258 Cal.Rptr. 147.) And again, the court conflated the two questions. In the court's view, the two issues involved "the same analysis" under the statutory language. (*Ibid.*) Furthermore, the court said: "In this case, for all practical purposes, the two concepts merge." (*Ibid.*) The court concluded that **CEQA** applied, that the **school** board used an "incorrect legal standard" in making the exemption determination, and that its failure to comply with **CEQA** was prejudicial. (*Id.* at p. 174, 258 Cal.Rptr. 147; cf., *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at p. 752, 272 Cal.Rptr. 83 [**school** district did not "consider the closure exempt from **CEQA**" but instead proceeded with a negative declaration]; *Fullerton, supra,* 32 Cal.3d at pp. 797, 798, 187 Cal.Rptr. 398, 654 P.2d 168 [**school** district's reconfiguration and secession plan was a project under **CEQA**; it "is an essential step leading ***1379** to ultimate environmental impact" as it "necessarily entails building a new high **school** and other actions which may have an environmental effect"].)

d. Analysis

Although some courts have conflated the issues presented in the first tier of the **CEQA** analysis, we shall separately address the first question first: Is this a project?

To answer that question, we turn to the two-pronged test for defining a project under **CEQA**, described above. (See *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116

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Cal.App.4th at p. 639, 10 Cal.Rptr.3d 560.) As to the first prong, there is no dispute that the decision challenged in this case is an "activity directly undertaken by any public agency." (§ 21065, subd. (a).)

Our focus is on the second prong-"whether the activities have a 'potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment....' (Guidelines, § 15378, subd. (a).)" **144(*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 639, 10 Cal.Rptr.3d 560.) As noted above, "project" is defined broadly for these purposes. (*Lighthouse Field Beach Rescue v. City of Santa Cruz, supra,* 131 Cal.App.4th at p. 1180, 31 Cal.Rptr.3d 901.) But "the broad definition of project is tempered by the requirement that **CEQA** applies only to those activities which 'may have a significant effect on the environment.' " (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified **School** Dist., supra,* 9 Cal.App.4th at p. 471, 11 Cal.Rptr.2d 792.) Applying those principles to the case at hand, we conclude that the District's **school** closure decision constitutes a project for **CEQA** purposes.

The consequences of the decision challenged here can be broken down into two components: (1) the closure of two **schools** (Redwood and Quail Hollow); and (2) the transfer of students from those **schools** to the District's two other campuses (BCE and SLE).

Concerning the first component, as a plurality of our state's high court recognized in *Fullerton,* while it "may be unlikely that the closure of a single elementary **school** would have a significant environmental impact apart from its effect on the use of the property ... the possibility cannot be rejected categorically." (*Fullerton, supra,* 32 Cal.3d at p. 796, fn. 16, 187 Cal.Rptr. 398, 654 P.2d 168.) As the *Fullerton* opinion stated: "Implementation of the secession Plan in the present case involves the possibility of a significant impact. Secession will likely require the construction of a new high **school** in Yorba Linda and may result in abandonment of some facilities in the remaining portion of the Fullerton HSD." (*Id.* at p. 794, 187 Cal.Rptr. 398, 654 P.2d 168, fn. omitted.)

***1380** As for the second component, transferring students may "change bus routes and schedules, and affect traffic patterns." (*Fullerton, supra,* 32 Cal.3d at p. 794, 187 Cal.Rptr. 398, 654 P.2d 168.) The transfer could increase traffic congestion and parking problems, with attendant environmental effects. (See, e.g., *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at pp. 755, 756, 272 Cal.Rptr. 83.) The transfer component also may pose some possibility of "increased physical harm to relocated [ ]students because of (1) the likelihood of a major earthquake ... and (2) altercations with students at **schools** receiving transferred [ ] pupils." (*Id.* at p. 757, 272 Cal.Rptr. 83 [stating party's contention].) Under the circumstances, at least at the threshold, the "possibility that the activity in question may have a significant effect on the environment" cannot be positively ruled out. (Cf., Guidelines § 15061, subd. (b)(3); *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified **School** Dist., supra,* 9 Cal.App.4th at p. 471, 11 Cal.Rptr.2d 792.)

In sum, both tests for defining a **CEQA** project are satisfied. We thus conclude that the **school** consolidation decision falls within the broad definition of a **CEQA** project. That conclusion finds further support in the very existence of a categorical exemption for **school** closures. As a matter of logic alone, if such closures were not **CEQA** projects, there would be no need for an exemption.

2. The Project Is Exempt.

Our conclusion that the challenged decision is a project brings us to the second part of the preliminary review analysis: Is the project exempt from **CEQA**? (See § 21080, subd. (a) [**CEQA** "shall apply to discretionary projects ... unless the project is exempt"]; Guidelines, § 15061, subd. (a) [once the "agency has determined that an activity is a project subject to **CEQA**," it "shall determine whether the project is exempt from **CEQA**"]; **145*Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 640, 10 Cal.Rptr.3d 560 [exemption is the "second issue arising in connection with the preliminary review"].)

a. CEQA Exemptions: General Principles

CEQA does not apply to projects that are statutorily

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or categorically exempt. (Guideline § 15061, subd. (b).) The Legislature has specified a number of statutory **CEQA** exemptions. (See, e.g., § 21080, subd. (b)(1)-(15); § 21080.18; § 21084; see *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230-1231, 32 Cal.Rptr.2d 19, 876 P.2d 505.) The Legislature also has authorized the State Resources Agency to identify other categories of exemptions, which are contained in the Guidelines. (See *Sierra Club*, at pp. 1230-1231, 32 Cal.Rptr.2d 19, 876 P.2d 505.) As to these, **CEQA** does not apply where there is "a ***1381** categorical exemption [in the Guidelines] and the application of that categorical exemption is not barred by one of the exceptions set forth in [Guidelines] Section 15300.2." (Guideline § 15061, subd. (b)(2).)

[8] The Guidelines contain 33 classes of categorical exemptions. (Guidelines, §§ 15301-15333.) Each class embodies a "finding by the Resources Agency that the project will not have a significant environmental impact." (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 116, 62 Cal.Rptr.2d 612. See also, *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 475, 129 Cal.Rptr.2d 344; Pub. Resources Code, § 21084, subd. (a).) In addition to the categorical exemptions, the Guidelines also incorporate a " 'common sense exemption,' " which " 'provides a short way for agencies to deal with discretionary activities which could arguably be subject to the **CEQA** process but which common sense provides should not be subject to the Act.' " (*Davidon Homes*, at pp. 112-113, 62 Cal.Rptr.2d 612, citing Guidelines § 15061, subd. (b)(3), and quoting the accompanying discussion.)

[9] There are exceptions to the categorical exemptions. (See Guidelines § 15300.2.) Among other things, a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (*Id.*, subd. (c). See *East Peninsula, supra*, 210 Cal.App.3d at p. 164, 258 Cal.Rptr. 147.) This is sometimes called either the "significant effects" exception or the "unusual circumstances" exception. (See *City of Pasadena v. State of California, supra*, 14 Cal.App.4th at p. 824, 17 Cal.Rptr.2d 766; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra*, 101 Cal.App.4th at p. 795, 124 Cal.Rptr.2d 731.) "The Guidelines do not define the term 'unusual circumstances.' " (*City of Pasadena v. State of California, supra*, 14 Cal.App.4th at p. 826, 17 Cal.Rptr.2d 766.) As explicated in case law, an unusual circumstance refers to "some feature of the project that distinguishes it" from others in the exempt class. (*Fairbank v. City of Mill Valley, supra*, 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233.) In other words, "whether a circumstance is '*unusual* ' is judged relative to the *typical* circumstances related to an otherwise typically exempt project." (*Santa Monica Chamber of Commerce*, at p. 801, 124 Cal.Rptr.2d 731.)

b. Judicial Determination

[10][11] As noted above, the court reviews decisions made during an agency's preliminary review for a prejudicial abuse of discretion. (*Association for a Cleaner Environment v. Yosemite Community College Dist., supra*, 116 Cal.App.4th at p. 636, 10 Cal.Rptr.3d 560 [reviewing determination that there was no project].) ****146** When faced with a challenge to an agency's exemption determination, the court considers whether the agency proceeded in the manner required by law and whether its determination is supported by substantial evidence. (§ 21168.5; see, e.g., *East Peninsula, supra*, 210 Cal.App.3d at p. 165, 258 Cal.Rptr. 147 [holding that **school** district failed to proceed in manner required by law]; ***1382** *Dehne v. County of Santa Clara, supra*, 115 Cal.App.3d at p. 837, 171 Cal.Rptr. 753 [holding that "planning commission's grant of a categorical exemption" for reconstruction of existing structures was "supported by substantial evidence"].) The scope of an exemption may be analyzed as a question of statutory interpretation and thus subject to independent review. (See e.g., *Fairbank v. City of Mill Valley, supra*, 75 Cal.App.4th at pp. 1258-1259, 89 Cal.Rptr.2d 233 [interpreting the scope of a categorical exemption]; cf., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra*, 101 Cal.App.4th at p. 795, 124 Cal.Rptr.2d 731 [same]; *Centinela Hospital Assn. v. City of Inglewood* (1990) 225 Cal.App.3d 1586, 1600, 275 Cal.Rptr. 901 [finding that the proposed facility was exempt as a matter of law].) But "the substantial evidence test governs our review of the [agency's] factual determination that a project falls within a categorical exemption." (*Fairbank*, at p. 1251, 89 Cal.Rptr.2d 233.)

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[12] Because the exemptions operate as exceptions to **CEQA**, they are narrowly construed. (See, e.g., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 793, 124 Cal.Rptr.2d 731.) "Exemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

*c. **School** Closure Exemption*

At issue here is the categorical exemption applicable to public **school** closures. Pursuant to section 21080.18, **CEQA** "does not apply to the closing of any public **school** in which kindergarten or any of grades 1 through 12 is maintained or the transfer of students from that public **school** to another **school** if the only physical changes involved are categorically exempt under Chapter 3 (commencing with Section 15000)" of the Guidelines. Of the 33 classes of categorical exemptions set forth in the Guidelines, one applies to the situation presented here: "Class 14 consists of minor additions to existing **schools** within existing **school** grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption." (Guidelines, § 15314.)

So far as we are aware, this particular exemption has been the subject of only one prior judicial decision, *East Peninsula.*[FN4] In that case, the defendant **school** board approved a high **school** closure and transfer of students. (*East Peninsula, supra,* 210 Cal.App.3d at pp. 161-162, 258 Cal.Rptr. 147.) The board made an ***1383** express determination that its decision was exempt from **CEQA**, under section 21080.18 and Guideline section 15314. (*Id.* at p. 162, 258 Cal.Rptr. 147.) But it did so without undertaking any environmental review. ****147**(*Id.* at pp. 172, 173, 258 Cal.Rptr. 147.) The trial court issued a peremptory writ of mandate, commanding the district to void its closure decision and to suspend all related activity "until the District has first analyzed the cumulative environmental effects of this and other **school** closures and transfers in compliance with **CEQA**." (*Id.* at pp. 162-163, 258 Cal.Rptr. 147.) In the trial court's view, "the District did not properly evaluate whether its proposed action was exempt from **CEQA**, a step preliminary to a determination of whether an EIR is required." (*Id.* at p. 163, 258 Cal.Rptr. 147.)

> FN4. As to the other two **school** cases discussed above, neither reached the exemption issue. The *Prentiss* court held that the **school** closure decision was not a project under **CEQA**. (*Prentiss, supra,* 111 Cal.App.3d at p. 851, 169 Cal.Rptr. 5.) The *South Gate* case involved a transfer of students without a **school** closure. (*South Gate, supra,* 184 Cal.App.3d at pp. 1423-1424, 229 Cal.Rptr. 568.)

On appeal, the *East Peninsula* court addressed this question: Is the **school** closure categorical exemption subject to the exception for significant cumulative effects? (*East Peninsula, supra,* 210 Cal.App.3d at pp. 160, 164-165, 258 Cal.Rptr. 147.) Framing its analysis as a matter of statutory interpretation, the court answered the question in the affirmative. (*Id.* at p. 166, 258 Cal.Rptr. 147.) Thus, the court held, "the plain language of section 21080.18[ ] requires an agency to consider the issue of significant effects and cumulative impacts of a transfer of students from a closed **school** in determining whether the project is exempt from **CEQA** under that statute." (*Id.* at p. 173, 258 Cal.Rptr. 147.) As the court recognized, its "interpretation of section 21080.18 leads to a situation where the amount of analysis and study involved at the preliminary review stage of determination of whether a project is exempt from **CEQA** may be similar to that involved at the 'second' stage where the agency conducts an initial study to determine whether the project has a significant effect on the environment [citation]. However, such result is mandated by the statutory language and does not appear to be repugnant to legislative policy." (*Ibid.*) [FN5]

> FN5. As the court that decided *East Peninsula* later clarified, however, "we did not hold in *East Peninsula* an agency always must conduct an 'initial study' before declaring a project exempt from **CEQA** review. Such a holding would run counter to the three-tiered structure of **CEQA** review under which, if a project is categorically exempt

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> 'no further agency evaluation is required' and no 'initial study' takes place." (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles, supra,* 90 Cal.App.4th at p. 1172, 109 Cal.Rptr.2d 504.)

Turning to the specific case before it, the *East Peninsula* court concluded that the **school** board "used an incorrect legal standard" in making its exemption determination because it failed to consider the cumulative environmental impacts of its decision. (*East Peninsula, supra,* 210 Cal.App.3d at p. 174, 258 Cal.Rptr. 147.) Furthermore, the court held, the board's "failure to comply with **CEQA**" was "prejudicial because meaningful information and analysis of cumulative effects and significant environmental effects not occurring at the receptor **schools** were omitted from the environmental review process." (*Id.* at p. 174, 258 Cal.Rptr. 147.)

***1384** *d. Analysis*

[13] We analyze the District's preliminary determination that its decision is exempt from **CEQA** (1) for compliance with procedural requirements and (2) for evidentiary support. (§ 21168.5; *Association for a Cleaner Environment v. Yosemite Community College Dist., supra,* 116 Cal.App.4th at p. 636, 10 Cal.Rptr.3d 560.) They are distinct issues: "if a procedural violation of **CEQA** is shown, the substantial evidence prong of the statutory standard of review does not come into play." (*Laurel Heights II, supra,* 6 Cal.4th at p. 1133, 26 Cal.Rptr.2d 231, 864 P.2d 502 [stating party's contention]. See ****148***No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at pp. 74-75, 118 Cal.Rptr. 34, 529 P.2d 66; *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at p. 1208, 22 Cal.Rptr.3d 203; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945-946, 91 Cal.Rptr.2d 66.)

SLV CARE challenges the exemption on both grounds. On the first question-procedural compliance-the key issue is timing: the District made its closure decision in April 2003; it approved the filing of a notice of **CEQA** exemption more than four months later, in August 2003. SLV CARE asserts a procedural violation of **CEQA** because the District failed to formally invoke the exemption in advance of its closure decision. As to the second question, SLV CARE challenges the evidentiary basis for the decision. We consider each point in turn.

Procedural compliance

[14][15] "In granting an exemption, the agency must proceed in the manner prescribed by law, lest it be charged with abusing its discretion." (*Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 842, 171 Cal.Rptr. 753.) "That law consists of **CEQA** statutes, the Guidelines, and the judicial gloss on both." (*Id.* at pp. 842-843, 171 Cal.Rptr. 753. Cf., *Kennedy v. City of Hayward* (1980) 105 Cal.App.3d 953, 962, 165 Cal.Rptr. 132 [in quasi-adjudicatory proceeding, due process principles apply].) Generally speaking, the agency should proceed with a "considered awareness of the purposes and policy" that underlie **CEQA**; it should not undertake "a mechanical application of the exemption criteria" in reaching its decision. (*Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 843, 171 Cal.Rptr. 753.)

Several legal principles are relevant to the issue of **CEQA** compliance, including requirements related to timing, documentation, and public comment. In applying these precepts, it is important to distinguish between an exemption determination such as the one made here, which is part of the agency's preliminary review, and a negative declaration or an EIR, which comes into play later in the **CEQA** analysis.

[16] As indicated above, the timing rules depend on which step of the **CEQA** process is involved. In cases involving the second and third tiers of ***1385 CEQA** analysis, where a negative declaration or an EIR is necessary, the law requires "that environmental issues be considered and resolved *before* a project is approved." (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 75, 118 Cal.Rptr. 34, 529 P.2d 66, italics added.) In such cases, courts condemn attempts at after-the-fact rationalizations. (*Id.* at p. 81, 118 Cal.Rptr. 34, 529 P.2d 66.) By contrast, determinations made as part of a preliminary, first-tier **CEQA** review are not formalized until after the project has been approved. Under the Guidelines, a notice of **CEQA** exemption "shall be filed, if at all, *after* approval of the project." (Guidelines, § 15062, subd. (a), italics added. See *County of Amador v. El Dorado*

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County Water Agency, supra, 76 Cal.App.4th at p. 962, 91 Cal.Rptr.2d 66 [notice of exemption was not valid, where it was filed before agency approved the project]; see also, e.g., *Magan v. County of Kings, supra,* 105 Cal.App.4th at pp. 470, 472, 129 Cal.Rptr.2d 344 [notice of exemption filed one day after action taken]; *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at pp. 1249, 1250, 89 Cal.Rptr.2d 233 [same].) Since the District's exemption determination was made as part of a preliminary, first-tier **CEQA** review, it was not untimely.

[17] As with timing rules, documentation requirements are different for first-tier assessments than for those undertaken**149 later in the **CEQA** process. When a negative declaration or an EIR is required, it must be in writing. " **CEQA** impliedly requires (and the guidelines expressly require) that the agency render a written determination whether a project requires an EIR before it gives final approval to that project." (*No Oil, Inc. v. City of Los Angeles, supra,* 13 Cal.3d at p. 75, 118 Cal.Rptr. 34, 529 P.2d 66 [post hoc negative declaration]. See Guidelines, § 15362 [defining "environmental documents"].) By contrast, there is no requirement that the agency put its exemption decision in writing. According to the Guidelines, "the agency *may* file a notice of exemption." (Guidelines, § 15062, subd. (a), italics added.) But it is not required to do so: "A notice of exemption has no significance other than to trigger the running of the limitations period." (*Apartment Assn. of Greater Los Angeles v. City of Los Angeles, supra,* 90 Cal.App.4th at p. 1171, 109 Cal.Rptr.2d 504.) For that reason, "it is irrelevant" whether an exemption notice contains "all that it should under the **CEQA** guidelines." (*Id.* at p. 1171, fn. 23, 109 Cal.Rptr.2d 504.)

[18] There are other procedural differences between first-tier review and later **CEQA** evaluations, including the opportunity for public comment. " **CEQA** provides for public comment on a negative declaration and an EIR. (Pub. Resources Code, § 21092.) By contrast, **CEQA** does not provide for a public comment period before an agency decides a project is exempt." (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, supra,* 52 Cal.App.4th at p. 1210, 61 Cal.Rptr.2d 447.) "Similarly, where an agency approves a project and simultaneously decides that the project is exempt from **CEQA**, there is no 'public hearing ... before the issuance of the notice of determination.' " (*Ibid.* See *City of Pasadena v. State of California, supra,* 14 Cal.App.4th at p. 821, 17 Cal.Rptr.2d 766 [agency "not required to hold a hearing prior to filing the notice of exemption"].)

[19] ***1386** Underlying these differences in procedural rules is a more fundamental concept: **CEQA** does not apply to exemption decisions. By definition, a "project falling within [ ] a categorical exemption is not subject to **CEQA**." (*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p. 124, 65 Cal.Rptr.2d 580, 939 P.2d 1280.) For that reason, compliance with the Act is not required. "Where a project is categorically exempt, it is not subject to **CEQA** requirements and 'may be implemented without any **CEQA** compliance whatsoever.' " (*Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 726, 3 Cal.Rptr.2d 488 (*Ukiah*). Accord, *Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 475, 129 Cal.Rptr.2d 344.) "Once this determination of threshold exemption is made, ... none of the **CEQA** requirements or procedures apply." (*Kennedy v. City of Hayward, supra,* 105 Cal.App.3d at p. 962, 165 Cal.Rptr. 132.)

To sum up, **CEQA** has no application to exemption determinations made during an agency's preliminary review, such as the one at issue here. Since **CEQA** does not apply, compliance with its procedural requirements is not required. Applying that principle here, there is no basis for overturning the District's exemption determination based on claims that it failed to proceed in the manner required by law.

Substantial evidence

[20] That brings us to the question of whether the challenged categorical exemption is supported by substantial evidence in the administrative record. Our analysis of that question proceeds in two steps: first, we consider the factual predicate for the **150 District's exemption determination; next, we examine evidence supporting the appellant's claim of exceptions to the exemption.

Exemption: The first step of the analysis concerns the exemption.

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[21] At the administrative level, the agency determines whether the project qualifies for a statutory or categorical exemption from **CEQA**. (Guidelines, § 15061, subd. (a).) There must be "substantial evidence that the [activity is] within the exempt category of projects." (*Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 475, 129 Cal.Rptr.2d 344.) That evidence may be found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold. (See *Dehne v. County of Santa Clara, supra,* 115 Cal.App.3d at p. 843, 171 Cal.Rptr. 753 [record of **CEQA** compliance included applicant's "detailed report" and information presented at five public hearings, "none of which were required by law"].)

[22] When called upon to review an agency's exemption decision, the court's task is to "determine whether, *as a matter of law,* the [activity meets] the definition of a categorically exempt project." ***1387**(*Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731.) As to that question, "we apply a de novo standard of review, not a substantial evidence standard." (*Ibid.* See also, e.g., *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268 ["the substantiality of the evidence supporting [quasi-legislative] administrative decisions is a question of law"].) But in undertaking our independent analysis, we bear in mind the "highly deferential" review standard that applies to the agency's factual determinations. (*Western States Petroleum Assn.,* at p. 572, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) As our high court has said, "the factual bases of quasi-legislative administrative decisions are entitled to the same deference as the factual determinations of trial courts...." (*Id.* at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) That deference limits the *scope* of judicial review as well. Generally speaking, the court "may consider only the administrative record in determining whether a quasi-legislative decision was supported by substantial evidence within the meaning of Public Resources Code section 21168.5." (*Ibid.,* fn. omitted.)

Turning to the case at hand, we begin by interpreting the exemption, starting with its plain language. In doing so, we keep in mind that **CEQA** is concerned only with physical changes to the environment. (Guidelines, § 15358, subd. (b); see, e.g., *City of Pasadena v. State of California, supra,* 14 Cal.App.4th at p. 829, 17 Cal.Rptr.2d 766.) The interpretation of the exemption presents a question of law. (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1251, 89 Cal.Rptr.2d 233.)

By statute, **CEQA** "does not apply to the closing of [a] public **school** ... or the transfer of students from that public **school** to another **school** if the only physical changes involved are categorically exempt" under the Guidelines. (§ 21080.18.) From the Guidelines, the pertinent categorical exemption is Class 14, which covers "minor additions to existing **schools** within existing **school** grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption." (Guidelines, § 15314.)

[23] The critical phrase here is *original student capacity.* (Guidelines, § 15314.) Because **CEQA** is concerned solely with physical changes to the environment,***151** "student capacity" must refer to the receptor **school's** physical space for housing students. (Cf., 2 Cal.Code of Regs. § 1859.35 ["existing **school** building capacity" is determined by multiplying number of classrooms times number of students]; compare, *East Peninsula, supra,* 210 Cal.App.3d at p. 175, 258 Cal.Rptr. 147 [in dicta, equating receptor **school's** original student capacity with "previous enrollment"].) We therefore interpret "student capacity" to mean the number of students that can be accommodated physically at the receptor **school**. That interpretation is bolstered by the juxtaposition of the term "original student ***1388** capacity" with the portion of the guideline specifying the maximum number of classrooms: The exemption is available where the addition to the **school** "does not increase original student capacity by more than 25% *or* ten classrooms, *whichever is less.*" (Guidelines, § 15314, italics added.) By this juxtaposition, the guideline equates student capacity and number of classrooms. That comparison makes no sense unless "student capacity" refers to physical space for housing students. As for the modifier ("original"), we take that to mean the receptor **school's** capacity as it exists prior to any structural additions to the campus resulting from the

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project.

To sum up our legal interpretation of the pertinent exemption: A **school** closure and accompanying transfer of students is exempt from **CEQA** so long as any resulting physical changes are categorically exempt. (§ 21080.18.) Minor additions to the receptor **school** are categorically exempt. (Guidelines, § 15314.) A minor addition is defined as the lesser of: (1) the addition of 10 or fewer classrooms; or (2) an increase in original student capacity of 25 percent or less. (*Ibid.*) In this context, original student capacity means the receptor **school's** preexisting physical ability to house students.

With that interpretation in mind, we next examine the evidence supporting the District's exemption determination. As explained above, the substantiality of that evidence presents a question of law for our independent review. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 792, 124 Cal.Rptr.2d 731.)

To a large extent, the relevant evidence is contained in the March 2003 report of the SSCC task force, which made the closure recommendations. That report contains data about the four individual elementary **schools**, including their capacity, their student populations, and the number of additional portable classrooms that would be required at each campus for it to operate as a receptor **school**.

As for the north valley **schools**, BCE's "current capacity" was listed at 675. BCE's student population then stood at 403; adding Redwood's 288 students would bring the total to 691 pupils at the consolidated campus.[FN6] The transfer of Redwood students to BCE thus represented an increase in BCE's original student capacity amounting to less than 2.4 percent-far below the 25 percent ceiling spelled out in the Class 14 guideline. (Guidelines, ***1389** § 15314.) In terms of classrooms, BCE would need one additional portable to ****152** accommodate consolidation, plus replacements for two others in poor condition. That number likewise falls far below the ceiling of 10 additional classrooms in the guideline. (*Ibid.*)

FN6. The initial study, which was later prepared by the environmental consultant, reflects slightly different student population numbers than the SSCC reported. The initial study indicates that BCE would gain 249 students, bringing its total enrollment to 649, while SLE would add 350 pupils, for a total enrollment of 718 students. These differences do not affect the availability of the Class 14 categorical exemption.

In the south valley, SLE's indicated capacity was 700. With a student population of 338, plus the transfer of Quail Hollow's 397 students, SLE would end up with 735 pupils.[FN7] The consolidation of students at SLE thus resulted in an increase in its original student capacity of 5 percent-again, well below the 25 percent maximum set forth in the guideline. (*Ibid.*) As for classrooms, SLE would need three additional portables to accommodate consolidation, plus replacements for another three. That number likewise is below the guideline's ceiling of 10 additional classrooms. (*Ibid.*)

FN7. See footnote 6, *supra.*

As a matter of law, the foregoing constitutes substantial evidence supporting the District's determination that its closure decision qualifies for a Class 14 categorical exemption from **CEQA**. (Cf., e.g., *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1259, 89 Cal.Rptr.2d 233 [proposed "5,855-square-foot retail/office" qualifies for Class 3 exemption, which allows up 10,000 square feet in urban area].)

Exception: The second step in the analytic process addresses exceptions to the categorical exemption.

[24] At the administrative level, once an agency "determines, based on substantial evidence in the record, that the project falls within a categorical exemption ..., the burden shifts to the challenging party ... to ' "produce substantial evidence..." ' ... that one of the exceptions to categorical exemption applies." (*Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731, internal quotation marks and citation omitted.)

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[25] The exceptions are contained in Guidelines section 15300.2. As relevant here, that section provides: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Guidelines, § 15300.2, subd. (c).) Thus, a "party challenging an agency's exemption decision must produce substantial evidence that the project has the potential for a substantial adverse environmental impact." (*Ukiah, supra,* 2 Cal.App.4th at p. 728, 3 Cal.Rptr.2d 488.)

In order to warrant application of the exception, the claimed environmental impact must satisfy certain substantive requirements. First, the ***1390** impact must constitute a *change* in environmental conditions. (Guidelines, § 15382.) "When reviewing the evidence, we will not consider evidence or arguments about the impact from the *existent* [ ] plant." (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 993, 63 Cal.Rptr.2d 244 [affirming negative declaration, where there was no evidence that the project would alter the existing effects]. See also, e.g., *Ukiah, supra,* 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488 [affirming exemption, where there was "no evidence that construction of the house would have any additional effect on runoff"].) Second, the impact must affect the *environment.* For that reason, "we must differentiate between adverse impacts upon particular persons and adverse impacts upon the environment of persons in general." (*Ukiah, supra,* 2 Cal.App.4th at p. 734, 3 Cal.Rptr.2d 488.) For the exception to apply, there must be evidence that the project "would adversely affect the environment of ****153** persons in general." (*Ibid.*) Third, the impact must constitute a *physical* environmental change, as opposed to a social or economic one. (See, e.g., *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at p. 758, 272 Cal.Rptr. 83.) "The decision to close a popular [ ] **school** is a decision of educational policy with political and social overtones" but our review of that decision "is delimited by the confines of environmental law." (*Id.* at p. 759, 272 Cal.Rptr. 83.) Fourth, there must be a reasonable possibility that the environmental impact will be *significant.* As defined in the Guidelines, that means "a substantial, or potentially substantial, adverse change" resulting from the project. (Guidelines, § 15382.)

Moreover, for the exception to apply, there must be substantial evidence of qualifying environmental impacts. Under the rule generally applicable to **CEQA** issues, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (§ 21080, subd. (e)(1). See also Guidelines, § 15384, subd. (b).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly erroneous or inaccurate ...." (§ 21080, subd. (e)(2). See also Guidelines, § 15384, subd. (a).)

When disputes over the evidentiary basis for an exception become the subject of litigation, the proper review standard must be applied. "There is a split of authority on the appropriate standard of judicial review" when the issue is "the applicability of the Guidelines section 15300.2(c) exception to a project that has been found to fall within a categorical exemption." (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1259, 89 Cal.Rptr.2d 233.) "Some courts have relied on cases involving review of a negative declaration, holding that a finding of categorical exemption cannot be sustained if there is a 'fair argument' based on substantial evidence that the project will have significant environmental impacts, even where the agency is presented with substantial evidence to the contrary." (*Ibid.*) "Other courts apply an ordinary substantial evidence test ..., deferring to the express or implied findings of the local agency that has found a categorical exemption applicable." ***1391**(*Id.* at pp. 1259-1260, 89 Cal.Rptr.2d 233. See also, e.g., *Ukiah, supra,* 2 Cal.App.4th at p. 728, fn. 7, 3 Cal.Rptr.2d 488; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 42 Cal.Rptr.3d 537, 545-546.) We need not resolve that dispute here.

In the case at hand, regardless of what review standard we apply, we find no substantial evidence to support the exception claimed by appellant SLV CARE here. (See *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 796, 124 Cal.Rptr.2d 731 [even under fair argument standard, challenger failed to demonstrate reasonable possibility

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of significant environmental effect]; *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233 [same].)

With respect to much of the evidence cited by SLV CARE in support of its claims of environmental impacts, it is not clear that it was part of the administrative record, which confines our review. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) The scope of our review is properly limited to the administrative**154 record, even though **CEQA** procedures may limit a challenger's "opportunity to create a record evidencing potential adverse impacts on the environment." (*Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 477, 129 Cal.Rptr.2d 344.) But as we now explain, even when all of appellant's evidence is considered, regardless of its source, it does not support a fair argument of significant environmental effects.

We address each ground put forth by SLV CARE as a basis for the claimed exception: (1) mold; (2) geologic hazards; (3) septic failure; and (4) traffic hazards and related issues (parking and emergency access).

(1) Mold: SLV CARE posits a potential "increase in mold due to more bodies [and] opening more rooms," as well as the "potential for adverse reactions to mold due to increase in sensitive receptors." As evidentiary support for those claims, SLV CARE points to a series of letters and reports concerning indoor air quality tests at BCE and other District **schools**, which were prepared by MACS Lab and signed by its Director of Field Services, Maheen B. Doctor. In early April 2003, Doctor confirmed "slightly elevated levels of some fungal elements," but stated that "the level of elevation is not considered significant." Acknowledging that there are "no established regulatory standards for the determination of 'acceptable' levels of mold" and that "individual sensitivities vary from person-to-person," Doctor continued to recommend "more vigilant housekeeping" to counteract the problem. The presence of mold and mildew in some portable classrooms at BCE also was noted by the SSCC task force in its report.

*1392 Having analyzed the foregoing evidence, we conclude that neither the SSCC information nor the MACS Lab correspondence supports the environmental impact claim urged by SLV CARE. The cited evidence fails on three grounds. First, there is no indication that the presence of mold is a *change* in environmental conditions. The mold was a preexisting condition at BCE, and there is no evidence that it will be exacerbated by the presence of additional pupils. A change in physical conditions is a necessary predicate for a finding of environmental impact. (See *Silveira v. Las Gallinas Valley Sanitary Dist., supra,* 54 Cal.App.4th at p. 993, 63 Cal.Rptr.2d 244; *Ukiah, supra,* 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488.) Second, as to the indoor air quality reports and letters, which were signed by Doctor on behalf of MACS Lab, while they suggest that particular individuals may have adverse reactions to mold, they do not demonstrate that **school** consolidation "would adversely affect the environment of persons in general." (*Ukiah,* at p. 734, 3 Cal.Rptr.2d 488.) Finally, there is no evidence that any possible environmental impact from the mold will be *significant.* In fact, the evidence is to the contrary-Doctor's letter states that the level of indoor spores "is not considered significant."

(2) Geologic Hazards: SLV CARE identifies geologic dangers as a significant environmental impact, citing a March 1990 letter to the District from a geological consultant, Woodward-Clyde. That letter acknowledges that the Ben Lomond fault lies approximately 100 feet southwest of the BCE campus. But under the heading "CONCLUSIONS," the letter states: "The information obtained during the course of our studies leading to this review appears to justify further downgrading the already minimal risk assigned to construction adjacent to the Ben Lomond fault, which traverses the general area in which the **School** District is located. We are no longer indicating it to be a potential earthquake source."

**155 Assuming that the cited 1990 letter was part of the administrative record, it does not constitute substantial evidence of environmental impact. Neither that letter nor anything else in the appellate record suggests that any geologic hazard is new, so as to constitute a change in environmental conditions. Nor is there any evidence suggesting that the closure decision amplifies any preexisting hazard, either because of the increase in student population at BCE or because of physical changes on that campus, including

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the addition of portable classrooms. (See *Citizen Action to Serve All Students v. Thornley, supra,* 222 Cal.App.3d at p. 757, 272 Cal.Rptr. 83 [finding "no evidence in the record" that the **school** closure "might cause an increased vulnerability to earthquake-related harm" and characterizing arguments to the contrary as mere speculation that "there *might* be such a danger, without hard fact"]; *Ukiah, supra,* 2 Cal.App.4th at p. 735, 3 Cal.Rptr.2d 488 [rejecting hearsay statements "that the site was on an earthquake fault" and finding that those statements did not constitute substantial evidence to overcome the categorical exemption].)

***1393** (3) Septic: As yet another environmental impact, SLV CARE lists septic problems at both receptor **schools**. As evidentiary support, SLV CARE points to one of the District's five-year maintenance plans; it also cites a February 2002 letter to the District from the California Regional Water Quality Control Board. The maintenance plan, which covers **school** years beginning in 1997 and ending in 2002, describes the septic fields at SLE and BCE as "failing." The February 2002 letter from the Regional Water Quality Control Board refers to septic problems dating back to 1998 at the District's shared high **school** campus in Felton. But the administrative record also contains more recent information, which addresses the then-current condition of the septic systems at each of the receptor **schools**. One such document is an e-mail sent March 31, 2003, from Dave Elliott, the District's Director of Maintenance and Operations, to Julie Haff, the District's Superintendent. In that e-mail, Elliott states: "The septic system at Boulder Creek below the two-story building was replaced in August of 2001 and is working as designed." Elliott also states: "At this time, I see no need for any further improvements to the septic systems at Boulder Creek Elementary." In addition, information presented to the District's Board from the SSCC task force notes both BCE's "new septic" and SLE's "shared septic (new)."

The evidence offered by SLV CARE on this point is deficient in several regards. First, as indicated by the District's more current information, the evidence of septic problems is outmoded. As such, it is "clearly erroneous or inaccurate" and does not constitute substantial evidence. (§ 21080, subd. (e)(2); Guidelines, § 15384, subd. (a).) Second, as with appellant's other claims, the proffered evidence does not represent the requisite *change* in environmental conditions. SLV CARE argues that the District failed to "consider the impact of doubling SLE's enrollment on the already failing septic system." But it offers no *evidence* that the claimed problem would be exacerbated by the presence of additional pupils. (See *Magan v. County of Kings, supra,* 105 Cal.App.4th at p. 477, 129 Cal.Rptr.2d 344 [rejecting challenger's arguments about potential impacts, as "based entirely on speculation"].)

(4) Traffic, Parking, Emergency Access: SLV CARE posits the existence of traffic and parking hazards at both receptor **schools**, citing written public comments by parents of Redwood students. On the issue of traffic, a Redwood parent who routinely ferried children to both of the District's****156** north valley elementary **schools** wrote: "It takes longer to drop off 1 child at Boulder Creek Elementary (excluding travel time) than it does to drop off 7 children at Redwood (excluding travel time). The hills up to Boulder Creek Elementary are steep and very narrow. There are a lot of pedestrians (mostly children) walking on all sides of these roads.... I don't feel this is safe to add more children to this **school** (Boulder Creek Elementary)." On the issue ***1394** of parking, another Redwood parent wrote: "Redwood Elementary has parking for dropping off and picking up students. Parking at Boulder Creek Elementary is minimal, and the facilities for dropping off or picking up students-especially if the student body swells-are both inadequate and dangerous. I expect cars will be lined up around the block." Information from the SSCC's transportation subcommittee reflects some of these same concerns. On the issue of emergency access, SLV CARE cites a letter with attachments, dated March 25, 2003, from Sam Robustelli, Chief of the Boulder Creek Fire Department. That document includes factual comparisons between the north valley **schools** based on emergency response, fire response, and highway access.

The data and opinions proffered by SLV CARE do not support its claim to the "significant effects" exception to the categorical exemption for **school** consolidation. As explained above, that exception applies "where there is a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances.*" (Guidelines § 15300.2, subd.

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(c), italics added.) To sustain the exception, the evidence must show "some feature of the project that distinguishes it" from others in the exempt class. (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233. See also, e.g., *Santa Monica Chamber of Commerce v. City of Santa Monica, supra,* 101 Cal.App.4th at p. 801, 124 Cal.Rptr.2d 731.)

SLV CARE offers no evidence that the traffic, parking, or access problems cited here are unusual circumstances in the context of **school** consolidations. In that respect, this case resembles *Fairbank v. City of Mill Valley.* There, the plaintiff cited "various comments from the administrative record, by which project opponents voiced concerns about the existing traffic and parking problems in downtown Mill Valley, and the prospect of the project exacerbating those problems." (*Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at p. 1260, 89 Cal.Rptr.2d 233.) The court rejected the opponent's claim to an exception, finding "no showing whatsoever of any 'unusual circumstances' surrounding the construction of this small commercial structure giving rise to any risk of 'significant' effects upon the environment. (Guidelines, § 15300.2(c).) While the addition of any small building to a fully developed downtown commercial area is likely to cause minor adverse changes in the amount and flow of traffic and in parking patterns in the area, such effects cannot be deemed 'significant' without a showing of some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use. Otherwise, no project that satisfies the criteria set forth in Guidelines section 15303(c) could ever be found to be exempt." (*Ibid.*) As the court concluded, "in the absence of any evidence of unusual circumstances nullifying the grant of a categorical exemption, there can be no basis for a claim of exception under Guidelines section 15300.2(c)." (*Id.* at pp. 1260-1261, 89 Cal.Rptr.2d 233. See also, e.g., *Ukiah, supra,* 2 Cal.App.4th at p. 736, 3 Cal.Rptr.2d 488 [the ***1395** claimed "potential environmental impacts" were "normal and ****157** common considerations in the construction of a single-family residence" and did not constitute unusual circumstances].) The same is true here-there is no evidence of unusual circumstances setting this **school** consolidation apart from others in the exempt class.

C. Summary of Conclusions

In this case, we are required to undertake only the first tier of the **CEQA** analysis. That analysis leads us the following conclusions: (1) The **school** consolidation decision at issue here constitutes a "project" for purposes of **CEQA**. (2) The District properly determined that its decision is exempt from **CEQA**. First, in making that determination, the District did not violate any procedural requirements of **CEQA**, because none apply. Moreover, as a matter of law, substantial evidence supports the District's determination that its closure decision qualifies for categorical exemption from **CEQA** under section 21080.18 and Guideline section 15314. SLV CARE did not carry its burden of showing an exception to the categorical exemption; it failed to offer sufficient evidence of significant environmental impacts on any of the proffered grounds.

II. BOND LAW

SLV CARE next argues that the District violated constitutional and statutory provisions governing use of bond funds. At issue is the District's use of proceeds from Measure S, an $18.5 million **school** facilities bond issue approved by local voters in 2000. As before, we begin by setting forth the relevant legal principles.

A. General Principles

"The usual method of funding new **school** construction in California has been for **school** districts to obtain voter approval for the issuance of general obligation bonds. The bonds are repaid by an annual levy of an *ad valorem* tax on real (and certain personal) property located within the area of the district." (62 Ops.Cal.Atty.Gen. 209, 210 (1979), fn. and citations omitted.)

Various provisions of law govern **school** bond financing. Some are constitutional. (See, e.g., Cal. Const., art. XIIIA, § 1, subd. (b); *id.*, art XVI, § 18.) Others are statutory. (See, e.g., Ed.Code, §§ 15100 et seq.) [FN8]

FN8. In this section of the opinion (II), which discusses bond law, further unspecified sta-

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tutory references are to the Education Code.

[26] *1396 Generally speaking, **school** bond financing is restricted to projects of a capital or permanent character. (See *Marin U. Junior College Dist. v. Gwinn* (1930) 106 Cal.App. 12, 13-14, 288 P. 799; 87 Ops.Cal.Atty.Gen. 157, 162 (2004).) That restriction is apparent from several constitutional provisions. We mention two such provisions, which are instructive because of their detail, although they do not apply directly to this case. First, under the constitutional provision added by Proposition 39, bond proceeds from voter-approved taxes or special assessments may be used only for "the construction, reconstruction, rehabilitation, or replacement of **school** facilities" and not "for any other purpose, including teacher and administrator salaries and other **school** operating expenses." (Cal. Const., art. XIIIA, § 1, subd. (b)(3).) [FN9] Similarly, bonds issued after**158 voter approval to exceed the debt limit may be used only for "the construction, reconstruction, rehabilitation, or replacement of **school** facilities, including the furnishing and equipping of **school** facilities, or the acquisition or lease of real property for **school** facilities...." (Cal. Const., art XVI, § 18, subd. (b).)

> FN9. Proposition 39, enacted in November 2000, "amended the Constitution to allow the issuance of bonds for the construction of **school** facilities if approved by 55 percent of a **school** district's voters and if specified conditions are met." (87 Ops.Cal.Atty.Gen., *supra*, at p. 157.) "Normally, approval of a **school** district's bonded indebtedness would require a two-thirds approval vote of a district's voters." (*Id.* at p. 157, fn. 1.) Legislation implementing Proposition 39 is codified at sections 15264-15284.

There are additional restrictions, including some that are statutory; for example, proceeds "shall not be applied to any other purposes than those for which the bonds were issued." (§ 15146, subd. (b).)

1. Nature of the Relationship Between the District and the Electorate

According to appellant SLV CARE: "A bond proposition submitted to the voters of a **school** district is a contract between the district and its voters."

Appellant's characterization does not find universal support in the cases. "The relationship arising out of a bond election has been defined in a number of California cases." (*Associated Students of North Peralta Community College v. Board of Trustees* (1979) 92 Cal.App.3d 672, 676, 155 Cal.Rptr. 250 (*Peralta*).) As explained in the *Peralta* case, some "early decisions" found "a contractual relationship between the public entity and individual electors." (*Ibid.*) "However, a later decision, now regarded as the leading case on the subject, retreated from this classification of the relationship as contractual." (*Ibid.*, citing *Peery v. City of Los Angeles* (1922) 187 Cal. 753, 203 P. 992.) In that later decision, the California Supreme Court "concluded that it was unnecessary to consider the relationship between public entity and electorate as strictly contractual, the status being merely *analogous* to a contract." (*Peralta*, at pp. 676-677, 155 Cal.Rptr. 250.)

*1397 In any event, precise characterization of the relationship may be academic. "It is clear that proceeds of a bond issue may be expended only for the purpose authorized by the voters in approving issue of the bonds [citation]. Whether the limitation be deemed to be contractual [citation] or of a status analogous to such relation [citation] or a restriction implied by the requirement of popular approval of the bonds [citation], it does restrict the power of the public body in the expenditure of the bond issue proceeds, and hence in the nature of the project to be completed and paid for. The statutes and ordinances under which the public body acts in submitting the bond issue proposal to the voters must be considered with the ballot proposition in determining the extent of this restriction [citations]." (*Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, 668, 68 Cal.Rptr. 317.)

2. Elements of the Relationship

In *Peralta*, the court identified four elements that typically comprise the relationship between the entity issuing a bond and its voters. (*Peralta, supra*, 92 Cal.App.3d at pp. 677-678, 155 Cal.Rptr. 250.) First, there are the authorizing statutes, which are "presumptively within the knowledge of each elector...."

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(*Id.* at p. 677, 155 Cal.Rptr. 250.) Second, the "resolution by which the bonding entity resolves to submit the issue to the District's electors has also been regarded as part of the 'contract' between the entity and its electors." (*Ibid.*) "A third element of the 'contract' is the ballot proposition submitted to the voters." (*Ibid.*) "The fourth and final element is assent or ratification" by the voters. (*Id.* at p. 678, 155 Cal.Rptr. 250.)

**159 Depending on the circumstances of the particular case, there may be other factors beyond the four basic elements described above. (*Peralta, supra,* 92 Cal.App.3d at p. 678, 155 Cal.Rptr. 250.) "Extrinsic documents may be added to the primary elements comprising the relationship." (*Ibid.*) But "no case or statutory authority supports the proposed incorporation into the 'bond contract' of the ballot argument submitted to the voters prior to the election." (*Id.* at pp. 678-679, 155 Cal.Rptr. 250.) To the contrary, at least one case has held that "statements 'disseminated to the general public' before the election ... cannot be deemed to modify the intentionally broad language of the proposition in fact submitted to the voters, the call of election published to them, and the statutes authorizing the procedure adopted [citation]." (*Mills v. S.F. Bay Area Rapid Transit Dist., supra,* 261 Cal.App.2d at p. 669, 68 Cal.Rptr. 317. Cf., *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 203, 182 Cal.Rptr. 324, 643 P.2d 941 [in the case of statewide voter initiatives, "ambiguities may be resolved by referring to the ballot summary, the arguments and analysis presented to the electorate, and the contemporaneous construction of the Legislature"]; *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 52, 184 Cal.Rptr. 713, 648 P.2d 935 [same].)

***1398 B. Application**

The *Peralta* case provides a useful approach for assessing appellant's argument that the District violated its bond obligations. We therefore begin our analysis by applying each of the elements identified in *Peralta* to the relationship between the District and the voters arising out of the November 2000 bond election. (See *Peralta, supra,* 92 Cal.App.3d at pp. 677-679, 155 Cal.Rptr. 250.) We then discuss the specific violations claimed by SLV CARE. Because the relevant facts are not in dispute, the issues presented are questions of law, which we review de novo. (See, e.g., *Service Employees Internat. Union v. Board of Trustees* (1996) 47 Cal.App.4th 1661, 1665, 55 Cal.Rptr.2d 484 [interpreting Education Code provisions].)

1. Elements

[27] The first of the elements that make up the entity-electorate relationship is the authorizing legislation. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250.) Here, the relevant statute is section 15100, which permits **school** districts to seek bond financing for a variety of purposes, including: (a) buying **school** land; (b) buying or constructing **school** buildings; (c) making "alterations or additions" to **school** buildings other than "current maintenance, operation, or repairs"; (d) "repairing, restoring, or rebuilding [ ] any **school** building damaged, injured, or destroyed by fire or other public calamity"; (e) acquiring "furniture, equipment, or necessary apparatus of a permanent nature"; and (f) permanently improving **school** grounds. (§ 15100, subds.(a)-(f).) [FN10] The **160 statutorily authorized purposes thus are broad but not limitless, being generally restricted to capital or permanent items.

> FN10. Section 15100 provides in full as follows: "Except as otherwise provided by law, the governing board of any **school** district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the **school** district or community college district, order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:
>
> (a) The purchasing of **school** lots.
>
> (b) The building or purchasing of **school** buildings.
>
> (c) The making of alterations or additions to the **school** building or buildings other than as may be necessary for current

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maintenance, operation, or repairs.

(d) The repairing, restoring, or rebuilding of any **school** building damaged, injured, or destroyed by fire or other public calamity.

(e) The supplying of **school** buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature.

(f) The permanent improvement of the **school** grounds.

(g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state **school** building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 17577 or 81613.

(i) The purchase of schoolbuses the useful life of which is at least 20 years.

(j) The demolition or razing of any **school** building with the intent to replace it with another **school** building, whether in the same location or in any other location.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition."

The second element is the District's formal resolution to submit the issue to the electors. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250; see § 5322.) In the preamble of its July 2000 resolution, the District indicated its desire "to improve **school** facilities to benefit students in the District." In the body of the resolution, the District formally determined to submit to the electorate "the question of whether the Bonds shall be issued and sold for the purpose of raising money to finance the **School** Facilities and paying costs incident thereto." The stated purpose of the election was "for the voters in the District to vote on a proposition, a copy of which is attached hereto ... containing the question of whether the District shall issue the Bonds for the purposes stated therein." The resolution thus speaks broadly of funding **school** facilities and incidental costs.

***1399** The third consideration is the ballot proposition itself. (*Peralta, supra,* 92 Cal.App.3d at p. 677, 155 Cal.Rptr. 250; see § 15122 [requirements as to the form of the ballot].) Measure S, put before the voters in the November 2000 election, was phrased as follows: "To acquire, construct, and modernize **school** facilities, build new classrooms to replace 30-year-old portables, construct a permanent Junior High at the current site, upgrade drainage, replace deteriorating plumbing and inadequate electrical systems, improve student access to classroom computers and technology, and make the District eligible to receive over $8 million in state-matching funds, shall the **San Lorenzo** Valley Unified **School** District be authorized to issue $18,500,000 of bonds at an interest rate below the legal limit?"

Those three elements-the statute, the resolution, and the ballot proposition-were before the voters considering Measure S. "The fourth and final element is assent or ratification by the electors, which, of course, is present here." (*Peralta, supra,* 92 Cal.App.3d at p. 678, 155 Cal.Rptr. 250.)

[28] In this case, there are no other factors that bear on the District-electorate relationship. (See *Peralta, supra,* 92 Cal.App.3d at pp. 678-679, 155 Cal.Rptr. 250.) More specifically, contrary to the contentions of appellant SLV CARE, ballot arguments are not part of the analysis. (*Ibid.*; *Mills v. S.F. Bay Area Rapid Transit Dist., supra,* 261 Cal.App.2d at p. 669, 68 Cal.Rptr. 317; cf., *Los Angeles County Transportation Com. v. Richmond, supra,* 31 Cal.3d at p. 203, 182 Cal.Rptr. 324, 643 P.2d 941 [state voter initiatives].)

****161 *1400 *2. Claimed Violations***

a. Promise of Matching Funds

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[29] As set forth in the ballot, one of the purposes of Measure S was to "make the District eligible to receive over $8 million in state-matching funds...." According to appellant SLV CARE, that language triggered the application of section 15122.5, which requires a statement in the sample ballot advising voters that the project is subject to discretionary state approval. In appellant's words: "In promising that approval of the bond measure would bring 'over $8 million in state-matching funds' without the required discretionary approval language, Respondent violated [ ] § 15122.5."

To properly assess appellant's contention, we begin with the statute. In pertinent part, section 15122.5 provides: "Whenever ... the project to be funded by the bonds will require state matching funds for any phase of the project, the sample ballot shall contain a statement ... advising the voters that the project is subject to the approval of state matching funds and, therefore, passage of the bond measure is not a guarantee that the project will be completed." (§ 15122.5, subd. (a).) [FN11]

> FN11. The full text of section 15122.5 reads: "(a) Whenever an election is called on the question of whether bonds of a **school** district shall be issued and sold for the purposes specified in Section 15100 and the project to be funded by the bonds will require state matching funds for any phase of the project, the sample ballot shall contain a statement, as provided in subdivision (b), advising the voters that the project is subject to the approval of state matching funds and, therefore, passage of the bond measure is not a guarantee that the project will be completed.
>
> "(b) The words to appear in the sample ballot in satisfaction of the requirements of subdivision (a) are as follows:
>
> 'Approval of Measure _____ does not guarantee that the proposed project or projects in the _____ **School** District that are the subject of bonds under Measure _____ will be funded beyond the local revenues generated by Measure _____. The **school** district's proposal for the project or projects may assume the receipt of matching state funds, which could be subject to appropriation by the Legislature or approval of a statewide bond measure.'
>
> "(c) This section does not apply to any election to incur bonded indebtedness pursuant to the Mello-Roos Community Facilities Act of 1982 contained in Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code."

Based on the statute's plain language, we reject appellant's contention. Section 15122.5 requires voter advisement when "the project to be funded by the bonds *will require state matching funds* ...." (§ 15122.5, subd. (a), italics added.) Neither the language of Measure S, nor any other evidence in the record, suggests that the bond-financed projects *required* state matching funds. Becoming "eligible to receive" state funds for Measure S projects is not the same as requiring such funds.

In short, we find no violation of section 15122.5.

***1401** *b. Expenditures*

SLV CARE challenges a number of the District's expenditures as unauthorized uses of the bond funds.[FN12] To streamline ****162** our discussion of this issue, we group the challenged expenditures into logical categories.

> FN12. In its opening brief, SLV CARE lists the following items as unauthorized expenditures: "a demographic study and 'geocoding' of student addresses used for the **school** closure project; printing the bond measure materials; deferred maintenance ... [¶] costs associated with consolidation [of] **schools** including moving and leasing portable [ ] classrooms, consultants, mold reports, and the belated **CEQA** study; the salary of the ex-Principal of Redwood Elementary, who was hired as Bond Manager, including his attendance and training at conferences, and

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> 15% of the salary of the CFO; payments to consultants, attorneys, and other professionals; and repair of the Felton campus septic system."

[30] *Administrative costs:* The resolution adopted by the District identified the purpose of the bond as "raising money to finance the **School** Facilities and paying costs incident thereto."

Incidental costs include the expense of administering and overseeing construction projects to be funded with bond money. As stated in a 2004 Attorney General opinion, which concerned the use of Proposition 39 bond funds: "Administrative oversight work is an integral part of the construction process." (87 Ops.Cal.Atty.Gen., *supra,* at p. 163.) As the Attorney General further explained, "the phrase 'the construction, reconstruction, rehabilitation, or replacement of **school** facilities' embraces project administrative costs, such as monitoring contracts and project funding, overseeing construction progress, and performing overall project management and accounting that facilitates timely completion of the construction project. A construction project generates not only the costs of materials and equipment, architectural and engineering design work, and construction worker salaries, but also costs of project administration-work that the **school** district would not be required to undertake or to fund *but for* the existence of the construction project." (*Id.* at p. 160.)

As the Attorney General recognized, analogous statutes bolster that conclusion. (See 87 Ops.Cal.Atty.Gen., *supra,* at pp. 162-163.) Among them is Government Code section 16727, which concerns issuance of the state's general obligation bonds. (*Ibid.*) According to subdivision (a) of that section: "Proceeds from the sale of any bonds ... shall be used only for the following purposes: (a) The costs of construction or acquisition of capital assets." (Gov.Code § 16727, subd. (a).) After defining capital assets, subdivision (a) continues: "Costs allowable under this section include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and *1402 assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements." (*Ibid.*) Under subdivision (d), proceeds also may be used to "pay the costs of a state agency with responsibility for administering the bond program." (*Id.,* subd. (d).)

As relevant to the challenges raised here, permissible administrative costs would include the salaries of in-house personnel acting as construction project administrators. (87 Ops.Cal.Atty.Gen., *supra,* at p. 158.) Administering the project "is an integral part of the construction process." (*Id.* at p. 163.) Administration may be provided by outside contractors or in-house personnel. " **School** district employees with the requisite expertise may be able to perform project management work at less cost to the district than if the work were performed by private consultants." (*Id.* at p. 162.) For these reasons, the prohibition against the use of "Proposition 39 **school** bond proceeds for 'teacher and administrator salaries and other **school** operating expenses' " does not apply "to the payment of salaries of **school** district employees who perform administrative oversight work on construction projects authorized by a voter approved bond measure." (*Id.* at p. 158, quoting Cal. Const., art. XIIIA, § 1, subd. (b)(3)(A). Cf., § 17074.10 [**school** modernization funds available under the Leroy F. Green **School** Facilities Act of 1998 "do not include**163 funding for administrative and overhead costs"].)

In sum, costs that are "incidentally but directly related to construction or acquisition" may be paid from proceeds of the state's general obligation bonds. (Gov.Code § 16727, subd. (a).) That includes administrative costs, such as salaries for personnel engaged in construction management and oversight. (87 Ops.Cal.Atty.Gen., *supra,* at pp. 162-163.)

Applying those concepts here, to the District's general obligation bonds, we reject the claim by SLV CARE that the salaries and associated training costs of the District's personnel were improper. There is no evidence that those expenditures were made for purposes other than management and oversight of those District construction projects that were funded by bond money. To the contrary, the unrebutted trial testimony shows that the challenged salary expenses in fact represent construction management. For example, District Superintendent Julie Haff testified that the

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facilities manager was "paid with bond funds" because "his job is strictly to supervise the spending of the construction funds, and it's totally dedicated to construction and our efforts to acquire and modernize our **school** facilities." The facilities manager's own testimony was to the same effect: Bryan Loehr stated that his job was to "manage all of the construction and modernization projects that are funded by the general obligation bonds and by the State modernization fund." In explaining the use of bond funds to pay 15 percent of the salary of the District's assistant superintendent of business services, Edith Henden, ***1403** Superintendent Haff testified, "that's her time dedicated to the expenditure of these bond funds for acquiring and modernizing our facilities."

[31] *Bond preparation costs:* Appellant SLV CARE also challenges expenses incurred in preparing the bonds, such as printing and attorney fees. According to appellant: "Bond proceeds may not be used to pay even the 'soft costs' of the bond measure such as printing, publication and even the bond attorney's opinion."

In support of its argument, appellant relies on a 1958 opinion of the Attorney General. (32 Ops.Cal.Atty.Gen. 249 (1958).) That opinion concludes that the expenses of printing the bonds and related publications, and the cost of the bond attorney's opinion, are "payable out of the general funds of the district, not out of bond proceeds." (*Id.* at p. 249.)

We do not find the proffered authority persuasive. The 1958 Attorney General opinion cited by appellant was based on quoted language of a provision of the 1943 Education Code, which has since been repealed. (Former § 7435; see now § 15145.) Under the repealed provision, expenses incurred for preparation of the bond constituted "a legal charge against the funds of the **school** district issuing the bonds." (Former § 7435.) The Attorney General interpreted the statutory reference to funds to mean the district's *general* funds, not *bond* proceeds. (32 Ops.Cal.Atty.Gen., *supra,* at p. 250.) But the Attorney General did "concede that the matter is not free from doubt." (*Ibid.*) More to the point, subsequent changes in the statutory language completely undermine the Attorney General's interpretation.

In pertinent part, the governing statute now reads: "All expense incurred for the preparation, sale, and delivery of the **school** bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing and distribution of the official statement, the obtaining of a rating, the purchase of insurance***164** insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the **school** district or community college district issuing the bonds are legal charges against the funds of the district issuing the bonds and *may be paid from the proceeds of sale of the bonds.*" (§ 15145, subd. (a), italics added. Cf., Gov.Code § 16727, subd. (e) [proceeds from the state's general obligation bonds may be applied to the "costs of the Treasurer's office directly associated with the sale and payment of the bonds, including, but not limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees of trustees"].)

***1404** Based on the statute's plain language, we find no merit in appellant's broad challenge to bond preparation expenses such as printing and counsel fees. Nor does SLV CARE offer evidence that particular expenditures within that category were improper. We therefore reject appellant's claim that these expenditures were unauthorized.

[32] *Construction costs:* Appellant SLV CARE takes issue with the District's use of bond funds for certain construction projects, characterizing them as unauthorized uses of the bond proceeds. Specifically, appellant cites deferred maintenance and repair of the septic system on the Felton campus.

An underlying theme of these challenges is the distinction between permanent, capital improvements on the one hand, and operation and maintenance on the other. (*Marin U. Junior College Dist. v. Gwinn, supra,* 106 Cal.App. at pp. 13-14, 288 P. 799 [**school** bonds restricted to capital projects].) In urging that distinction, appellant directs us to article XIIID of the California Constitution, which defines both concepts: " 'Capital cost' means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency." (Cal.

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Const., art. XIIID, § 2, subd. (c).) " 'Maintenance and operation expenses' means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement." (*Id.*, subd. (f).)

Armed with those concepts, appellant SLV CARE mounts a general challenge to District expenditures that it categorizes as deferred maintenance. As authorized elsewhere in the Education Code, a **school** district "may establish a restricted fund to be known as the 'district deferred maintenance fund' for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of **school** buildings," for removing asbestos and lead, and for "other items of maintenance approved by the State Allocation Board." (§ 17582, subd. (a).) Money deposited to the deferred maintenance fund "may be received from any source whatsoever," but it must "be accounted for separately from all other funds and accounts...." (*Ibid.*)

According to appellant, the District "made no effort to determine which, if any deferred maintenance projects might qualify for use of bond moneys. Bond money transferred into the deferred maintenance account was used indiscriminately for anything that qualified as deferred maintenance." SLV CARE does not identify specific improper items, however.

***1405** We reject appellant's unfocused substantive challenge, which fails to identify-much less support-specific improper deferred maintenance expenses. Dealing in generalities, as we must, we conclude that ****165** the expenditures for deferred maintenance were proper. First, under the governing statute, authorized bond projects include "alterations or additions to the **school** building or buildings other than as may be necessary for *current* maintenance ...." (§ 15100, subd. (c), italics added.) Appellant fails to demonstrate that the District paid for any *current* maintenance items with *deferred* maintenance bond funds. Second, as to the ballot language, Measure S specifically sought money for "modernization." There is no evidence that any deferred maintenance project falls outside that rubric.

Appellant SLV CARE also alleges the District's misuse of bond funds based on transfers between its accounts. In its opening brief, SLV CARE charges that "a large portion of the bond money transferred into the deferred maintenance account was again transferred into the general fund where it was used for general operational expenses, including salaries." In its reply brief, SLV CARE asserts that the District once "transferred $85,905 in bond money into the general fund to cover a deficit." In support of that assertion, appellant cites testimony by Edith Henden, the District's assistant superintendent of business services, who testified concerning entries in the District's June 2002 audited financial statements.

While the cited evidence does show that funds were transferred between accounts, it does not demonstrate impropriety. As SLV CARE points out, Henden did acknowledge that $104,000 in bond funds had been "transferred out of the building fund and into deferred maintenance account" and also that there had been a transfer "from the deferred maintenance fund to the general fund" amounting to nearly $86,000. But as she explained, the transfer represented an "audit adjustment" entry to avoid an impermissible year-end deficit, and the money was transferred back.[FN13] SLV CARE cites no other evidence of impropriety, and the trial court found none. Appellant's claim of statutory violations in connection with the District's transfers of deferred maintenance funds thus fails for lack of evidentiary support.

> FN13. Henden was asked: "Would it have been possible to transfer $85,905 into the general account from deferred maintenance if, in fact, this 104,000 from the bond money hadn't been there?" She responded: "I want to say yes, but I think I need to expand a little bit. You can't have-you can't end the year with a deficit in this fund. So the general fund would have-essentially, the transfer would have been made because it's an audit exception, an audit adjustment that needed to be made. So we would have booked it; then we would have transferred funds back from-to the general fund to cover it."

Apart from its deferred maintenance claims, SLV CARE also takes issue with the use of bond funds to

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repair the septic system at the Felton campus.

***1406** We reject that contention as well. As before, we look first to the statute. Among the permissible purposes for bond funds is the "carrying out of the projects or purposes authorized in Section 17577 ...." (Ed. Code, § 15100, subd. (h).) That section in turn provides that a " **school** district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each **school** property." (§ 17577.) It further provides: "The cost thereof may be paid from the building fund, including any bond moneys therein." (*Ibid.*) Repair of the septic system thus is proper under the statute. It is also proper under the language of Measure S, either as a means to "modernize **school** facilities" or under the measure's plan to "replace deteriorating plumbing."

[33] *Consolidation costs:* Appellant's final challenge is to expenses associated with the **school** closures and consolidation: ****166** demographic and geo-coding studies; consultants; mold reports; the **CEQA** study; and the moving and leasing of portable classrooms.

With respect to the consultants and studies, we again find guidance in the state's general obligation bond law. (See Gov.Code § 16727.) It permits bond funds to be used for "costs incidentally but directly related to construction or acquisition, *including, but not limited to, planning,* engineering, construction management, architectural, and other design work, *environmental impact reports and assessments,* required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements." (*Id.*, subd.(a), italics added.) Applying that statute here, the costs for studies and consultants must be upheld. The demographic studies represented planning expenses, which helped the District determine where to construct or improve facilities. The mold reports served a similar planning function. And the **CEQA** study falls within the rubric of an environmental impact assessment.

As for the moving and leasing of portable classrooms, SLV CARE argues: "Bond law does not allow Measure S money to be used to *lease* anything."

That argument cannot be supported. As explained in a 1979 Attorney General opinion, there are various methods of "funding new **school** construction in California...." (62 Ops.Cal.Atty.Gen., *supra,* at p. 210.) One "alternative for constructing new **school** facilities has been the use of 'lease-purchase agreements.' " (*Ibid.*, citing Ed. Code, §§ 39300-39305 [repealed; see now Ed. Code, §§ 17400-17404, 17406].) As that opinion suggests, **school** districts may acquire new **school** facilities through leasing arrangements. Section 17400 thus authorizes "leases and agreements relating to real property and buildings." Section 17405 provides that "relocatable" structures may constitute **school** buildings, and it authorizes the lease of such structures subject to enumerated statutory requirements. ***1407** Other sections likewise implicitly recognize that "construction of a **school** building" may be accomplished with a "factory-built **school** building." (§ 17357. See also, e.g., §§ 17352, 17358.)

In short, there is no legal basis for appellant's argument that the installation of leased portable classrooms does not qualify as construction of **school** facilities. Under the statute, it constitutes the "building ... of **school** buildings." (§ 15100, subd. (b).) Under the language of Measure S, it falls within the stated purpose to "acquire [or] construct [ ] **school** facilities."

C. Summary of Conclusions

We find no violation of bond law in connection with Measure S. Contrary to the contention of appellant SLV CARE, the fact that one of the express purposes of Measure S was to "make the district eligible to receive over $8 million in state matching funds" did not trigger the advisory requirements of section 15122.5. On the separate question of the District's expenditures from bond proceeds, we likewise reject appellant's challenges to administrative costs, including salaries, bond preparation expenses, specific construction projects, and **school** consolidation expenses. Neither the law nor the record supports those claims.

III. DISCLOSURE OF PUBLIC RECORDS

SLV CARE next contends that the District violated two state statutes requiring the disclosure of public records: the California Public Records Act (CPRA) and the Ralph M. Brown Open Meeting Act ****167** (Brown Act).[FN14] As with our analysis of the preceding issues, we start by describing the governing legal principles.

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FN14. In this section of the opinion (III), which concerns the CPRA and the Brown Act, further unspecified statutory references are to the Government Code.

A. General Principles

1. The California Public Records Act

"In 1968, the Legislature clarified the scope of the public's right to inspect public records by enacting the CPRA." (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 825, 98 Cal.Rptr.2d 564.) The Act is codified at sections 6250 et seq.

a. Policy and Operation

[34][35] The CPRA "was enacted for the purpose of increasing freedom of information by giving members of the public access to information in the possession ***1408** of public agencies." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425-426, 121 Cal.Rptr.2d 844, 49 P.3d 194, citing *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651, 230 Cal.Rptr. 362, 725 P.2d 470.) "The CPRA embodies a strong policy in favor of disclosure of public records...." (*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831, 108 Cal.Rptr.2d 870.) Public records are broadly defined. (*Id.* at p. 824, 108 Cal.Rptr.2d 870; see § 6252, subd. (e).)

"A state or local agency, upon receiving a request by any person for a copy of public records, generally must determine within 10 days whether the request seeks public records in the possession of the agency that are subject to disclosure." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, citing § 6253, subd. (c).) "The Act includes protections and incentives for members of the public to seek judicial enforcement of their right to inspect public records subject to disclosure." (*Id.* at p. 427, 121 Cal.Rptr.2d 844, 49 P.3d 194. See *id.* at pp. 427-428, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6259 [fee provisions].)

[36] Despite the strong legislative policy favoring access, "the public's right to disclosure of public records is not absolute. In California, the Act includes two exceptions to the general policy of disclosure of public records: (1) materials expressly exempt from disclosure pursuant to section 6254; and (2) the 'catchall exception' of section 6255, which allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1017, 88 Cal.Rptr.2d 552, fns. omitted.) But "unless exempted, all public records may be examined by any member of the public, often the press, but conceivably any person with no greater interest than idle curiosity." (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1125, 97 Cal.Rptr.2d 439.)

b. Judicial Review

"The Act sets forth specific procedures for seeking a judicial determination of a public agency's obligation to disclose records in the event the agency denies a request by a member of the public." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6258.) The Act includes a provision "directing the trial court in a proceeding under the Act to reach a decision as soon as possible (§ 6258)," as well as a "provision for expedited appellate review (§ 6259, subd. (c))," which "reflect a clear legislative intent that the determination****168** of the obligation to disclose records requested from a public agency be made expeditiously." (*Id.* at p. 427, 121 Cal.Rptr.2d 844, 49 P.3d 194.)

[37][38] ***1409** As for appellate review, "an order of the trial court under the Act, which either directs disclosure of records by a public official or supports the official's refusal to disclose records, is immediately reviewable by petition to the appellate court for issuance of an extraordinary writ." (*City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1016, 88 Cal.Rptr.2d 552.) "The standard for review of the order is 'an independent review of the trial court's ruling; factual findings made by the trial court will be upheld if based on substantial evidence.' " (*Ibid.*, citing *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336, 283 Cal.Rptr. 893, 813 P.2d 240. Accord, *California State University, Fresno Assn.,*

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Inc. v. Superior Court, supra, 90 Cal.App.4th at p. 824, 108 Cal.Rptr.2d 870.)

2. The Brown Act

[39] "The Brown Act (§ 54950 et seq.) provides for open meetings for local legislative bodies such as city councils, boards of supervisors and **school** boards." (*Ingram v. Flippo* (1999) 74 Cal.App.4th 1280, 1287, 89 Cal.Rptr.2d 60.)

a. Policy and Operation

[40] As the Legislature explicitly declared in enacting the Brown Act, "public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (§ 54950.) "A major objective of the Brown Act is to facilitate public participation in all phases of local government decisionmaking and to curb misuse of democratic process by secret legislation by public bodies." (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555, 35 Cal.Rptr.2d 782.)

"Numerous provisions of the Act combine to ensure public notice of and access to meetings of legislative bodies." (*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60.) As relevant here, the Brown Act accords public record status to certain writings distributed for consideration at the public meeting of an agency's legislative body, including the agenda. (§ 54957.5.)

b. Judicial Review

Several avenues of judicial relief are available to address violations of the Brown Act. "To assist in enforcement of the open meeting laws, the Act provides for criminal penalties and civil injunctive or declaratory relief. (§§ 54959, 54960.)" (*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60. See also, e.g., ***1410***California Alliance for Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024, 1030, 65 Cal.Rptr.2d 833 [plaintiff is entitled to declaratory relief where an actual controversy exists over "past compliance with the Brown Act"].) "In addition, actions taken in violation of the Brown Act may be declared null and void by a court. (§ 54960.1.)" (*Ingram v. Flippo, supra,* 74 Cal.App.4th at p. 1287, 89 Cal.Rptr.2d 60.)

[41] Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency's action, Brown Act violations will not necessarily "invalidate a decision. [Citation.] Appellants must show prejudice." (*Cohan v. City of Thousand Oaks, supra,* 30 Cal.App.4th at pp. 555-556, 35 Cal.Rptr.2d 782 [no prejudice shown from violation of § 54954.2, subd. (a), which "requires that an agenda be posted at least 72 hours before a regular ****169** meeting and forbids action on any item not on that agenda"].)

B. Application

With those principles in mind, we turn to the three specific contentions raised by appellant SLV CARE: (1) that the trial court erred in failing to find violations of the California Public Records Act; (2) that the trial court should have granted relief under the Brown Act; and (3) that the trial court committed prejudicial error in excluding testimony from David Churchill about those violations.

1. Background

SLV CARE made a number of written requests for public records relating to the closure decision, initially through its first attorney Steven A. Greenburg. The District responded to those requests. In its statement of decision, the trial court detailed the relevant chronology of request and response. To summarize, Greenburg wrote letters in June, July, and August 2003 requesting documents and demanding that the District cure its claimed disclosure violations. The District forwarded more than 400 pages of records to Greenburg in July, and it provided him with additional documents the following month. A separate request for documents was e-mailed to the District by David Churchill.

There was trial evidence concerning the scope of the requests and the extent of the District's compliance. SLV CARE sought to elicit Churchill's testimony about his request for public records and the District's refusal to comply, but the trial court excluded that

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evidence because Churchill did not identify himself as a member of SLV CARE when he made the request.

*1411 In its statement of decision, the trial court observed: "There were no complaints of incomplete production in any of the correspondence except Mr. Greenburg's unexplained continued requests for the same exhibits already produced to Greenburg" and to appellant's trial counsel. After describing the District's compliance with respect to specific requested items, the trial court expressly found "insubstantial evidence of failure to produce documents in a timely manner" under either the CPRA or the Brown Act.

2. The California Public Records Act

[42] As to disclosure under the CPRA, SLV CARE asserts that there is "unrebutted evidence" that the District "refused to fully comply with its obligations."

Based on our review of the evidentiary record, we disagree.

As one example of disclosure violations, SLV CARE cites the testimony of the District's superintendent, Julie Haff, asserting: "She admitted to producing e-mails at her deposition that she had not produced in response to the Records Act request." But in the cited testimony, Haff clarified that she had "a practice of reading e-mails and deleting them." As a result of that practice, Haff believed that she "had no e-mails." But she later discovered that her laptop computer "was actually saving some e-mails that I had received that I sent a response to. Those were the only e-mails I had. I did not know that I had them."

As the trial court properly determined, the cited testimony is insubstantial evidence of failure to timely produce available documents.

As a second example, appellant SLV CARE points to testimony by Facilities Manager Loehr that "he had custody of the bond budget file" but that Superintendent Haff "did not ask him to produce that file in response to the record request." Appellant likewise asserts that the District's assistant superintendent, Don Fox, **170 "had financial documents that were responsive to the records request [ ] but he failed to produce them."

The problem with these contentions is that nothing about the bond budget file or related financial information was ever mentioned in any of the requests made by attorney Greenburg, who was the only person purporting to represent SLV CARE. (David Churchill did request information about bond expenditures, but he did so without mentioning any relationship to SLV CARE.) Initially, Greenburg specified only documents relating to two board meetings: the one in April 2003, when the Board made its closure decision, and the one in June 2003, when the Board rejected private funding to keep *1412 Redwood Elementary open for another year. His later requests sought tapes, agendas, and minutes from all meetings of the SSCC task force and of the Board held between June 2002 and August 2003. But at no time did Greenburg's correspondence indicate that he was seeking information about the bond or other financial issues. In the absence of evidence that SLV CARE requested financial documents, there can be no statutory violation with respect to this information.

SLV CARE also charges the District with unlawfully refusing to turn over available geologic reports. As evidentiary support for that claim, appellant again cites testimony by Julie Haff, the District's superintendent. As appellant characterizes that testimony, "her maintenance director had geologic reports that were responsive to Appellant's records request. She asked for these reports, but never obtained them." Haff's trial testimony does not support appellant's characterization. After being shown a 1985 geologic report, Haff was asked whether she had ever seen it before. She responded: "I don't believe I have, no." She was then asked, "where you would likely find that?" Her response was: "This would most likely be found with the Director of Maintenance." Haff then confirmed that she had asked the maintenance director to "turn over his files" prior to the **school** closures, but that he had not done so.

Significantly, however, there is no evidence that the maintenance director's files contained the requested 1985 geologic report. Haff testified only that such a report "likely" would be in those files. There is no evidence that it was.

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The final asserted instance of violation relates to internal documents. According to appellant SLV CARE, it "sought internal documents used to evaluate the **schools** being targeted for closure. Ms. Haff testified that she did not produce any internal records in response to the record request." SLV CARE further maintains: "Not until shortly before trial were any internal records produced."

Again, however, the record fails to support appellant's contention. Turning first to the superintendent's testimony, she stated that she had no additional internal documents to produce. She was asked at trial: "Are there no internal District documents on the issue of the closure of Redwood **School** other than what's in the public record?" She answered: "No, there are no other records. I've taken what I-I mean, a year and a half ago, I took what I had and I put it into power point presentations. Those became part of the public record. That's what I maintained." Turning next to appellant's claim that responsive internal documents were available but withheld until shortly before trial, SLV CARE offers no citation to the record to support that claim, and our review of the record reveals no such evidence.

***1413** As explained above, on appellate review of claims under the California Public Records Act, we uphold the trial court's ****171** factual findings to the extent that they are based on substantial evidence. (*City of San Jose v. Superior Court, supra,* 74 Cal.App.4th at p. 1016, 88 Cal.Rptr.2d 552.) Here, the trial court determined that SLV CARE produced "insubstantial evidence" of CPRA violations. On this record, we agree.

3. The Brown Act

Appellant SLV CARE asserts Brown Act violations based on its claim that it was not provided with all of the public records given to members of the District's Board at public meetings. (See § 54957.5.)

Appellant's Brown Act claim fails for the same reasons as its CPRA claim. As just explained, the trial court determined that the District had complied with all of the relevant public records requests, and that determination finds adequate support in the record.

4. Excluded Testimony

[43] Appellant SLV challenges the trial court's decision to exclude David Churchill's proffered testimony to the extent that it concerned his requests to the District for public records.

The trial court's decision was made in response to a defense objection on relevance grounds. The District's counsel urged a "foundational requirement" that Churchill was acting on behalf of SLV CARE, asserting: "Without that, he doesn't have standing to testify here."

In sustaining the defense objection, the court explained that it considered Churchill's request "as being from an individual and not from the plaintiff in this action." The court acknowledged "that citizens have the right to invoke the protections of the statutes that we've been talking about"; but it concluded that "the evidence must be in some way related to the association [SLV CARE] or described as being from the association; and that's not the case in the instance of the e-mails." The trial court reiterated its reasoning in its statement of decision: "Mr. Churchill wrote his requests as an individual. He never identified himself as a member of SLV CARE. Any failure to produce documents pursuant to the Public Records Act may be actionable by ***1414** him as an individual. However, Mr. Churchill can't request records as an individual and then come into court as a representative of SLV CARE and complain of a failure to produce documents by the District in this action. The court's analysis had nothing to do with Mr. Churchill having to identify himself in order to obtain documents; it was merely a finding of lack of standing to pursue this action (in which he is not a party plaintiff) based on what he did individually."

Appellant assigns the trial court's decision as prejudicial error. According to appellant, its "members had no obligation to notify the District that they were representing themselves as individuals or were acting as members of SLV CARE." It further asserts: "Mr. Churchill had an absolute right to request and obtain public records." In appellant's view, the court's decision "makes sense only if Mr. Churchill had a duty to identify himself ... as an individual or as a member of

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SLV CARE," which he did not.

[44][45][46] We review the trial court's ruling for an abuse of discretion. "Broadly speaking, an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence. Speaking more particularly, it examines for abuse of discretion a decision on admissibility that turns on the relevance of the evidence in question." (*People v. Waidla* (2000) 22 Cal.4th 690, 717-718, 94 Cal.Rptr.2d 396, 996 P.2d 46, ****172** citations omitted.) Put another way: "The trial court retains broad discretion in determining the relevance of evidence." (*People v. Garceau* (1993) 6 Cal.4th 140, 177, 24 Cal.Rptr.2d 664, 862 P.2d 664.) Relevance is statutorily defined as "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid.Code, § 210.) Though not directly germane, a "matter collateral to an issue in the action may nevertheless be relevant to the credibility of a witness who presents evidence on an issue...." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9, 82 Cal.Rptr.2d 413, 971 P.2d 618.) But the admissibility of such collateral matter also lies within the trial court's discretion. (*Id.* at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

We first consider the factual component of the trial court's ruling. (Cf., *Johns v. City of Los Angeles* (1978) 78 Cal.App.3d 983, 998, 144 Cal.Rptr. 629 [consideration of the evidence "is essential to a proper exercise of judicial discretion"].) As to that component, "evaluating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling." (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067, 24 Cal.Rptr.2d 654.) Here, the pertinent finding is that Churchill did not purport to act in his capacity as a member of SLV CARE when he requested the documents. Substantial evidence in the record supports that finding, in that Churchill's e-mails did not indicate that he was acting on appellant's behalf.

***1415** We next consider the legal basis for the trial court's evidentiary ruling. (Cf., *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297, 255 Cal.Rptr. 704 [court must exercise its discretion within the "confines of the applicable principles of law"]; *In re Robert L., supra,* 21 Cal.App.4th at p. 1067, 24 Cal.Rptr.2d 654 ["scope of discretion lies in the particular law to be applied"].) Here, the trial court concluded that any failure on the part of the District to provide documents to Churchill is actionable by him, but not by SLV CARE. We agree.

In affirming the trial court's decision, we acknowledge that "any person" may enforce the CPRA. (See *Connell v. Superior Court* (1997) 56 Cal.App.4th 601, 611, 65 Cal.Rptr.2d 738.) "Thus, when section 6253 declares *every* person has a right to inspect any public record, when section 6257 commands state and local agencies to make records promptly available to *any* person on request, and when section 6258 expressly states *any* person may institute proceedings to enforce the right of inspection, they mean what they say." (*Id.* at pp. 611-612, 65 Cal.Rptr.2d 738.)

[47] By the same token, however, the relevant statutory provision authorizes a plaintiff "to enforce *his or her right* to inspect or to receive a copy of any public record or class of public records under this chapter." (§ 6258, italics added.) That provision "contemplates a declaratory relief proceeding commenced only by an individual or entity seeking disclosure of public records...." (*Filarsky v. Superior Court, supra,* 28 Cal.4th at p. 426, 121 Cal.Rptr.2d 844, 49 P.3d 194, discussing § 6258.) The statute provides neither explicit nor implicit authority for one person to enforce another's inspection rights. (Cf., § 6264 [order allowing inspection or copying of public records by district attorney].) Churchill thus could enforce his own statutory rights, but not those of appellant SLV CARE.

In light of this legal authority, we conclude, the court properly determined that the proffered testimony was irrelevant to *appellant's* claim of disclosure violations. Nor did it have relevance as impeachment evidence relating to the superintendent's ****173** credibility, since Churchill's written requests for public records were not addressed to her. (Cf., *People v. Rodriguez, supra,* 20 Cal.4th at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

In sum, the trial court had both an adequate factual basis and appropriate legal justification for its decision to exclude Churchill's testimony on this point. We therefore find no abuse of discretion in the challenged evidentiary ruling.

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139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128, 209 Ed. Law Rep. 290, 06 Cal. Daily Op. Serv. 4493, 2006 Daily Journal D.A.R. 6509
(Cite as: 139 Cal.App.4th 1356, 44 Cal.Rptr.3d 128)

*1416 C. Summary of Conclusions

Based on the evidence in the record, we affirm the trial court's determination that SLV CARE did not sustain its claim of CPRA and Brown Act violations. We also affirm the court's decision to exclude Churchill's testimony on this point.

IV. COMMUNITY INVOLVEMENT STATUTES

SLV CARE argues that the District violated provisions of the Education Code that mandate community involvement in decisions involving **school** closures and the use of surplus property. As before, we begin by summarizing the applicable law.

A. Governing Statutes

The applicable provisions are contained in the Education Code, Part 10.5 (**School** Facilities), Chapter 4 (Property: Sale, Lease, Exchange), Article 1.5 (Advisory Committees).[FN15] That article comprises sections 17387 through 17391.

> FN15. In this section of the opinion (IV), further unspecified statutory references are to the Education Code.

Section 17387 provides in pertinent part: "It is the intent of the Legislature to have the community involved before decisions are made about **school** closure or the use of surplus space, thus avoiding community conflict and assuring building use that is compatible with the community's needs and desires." (§ 17387.) Section 17388 sets forth the instances in which advisory committees may or must be used. It states: "The governing board of any **school** district may, and the governing board of each **school** district, prior to the sale, lease, or rental of any excess real property, except rentals not exceeding 30 days, shall, appoint a district advisory committee to advise the governing board in the development of districtwide policies and procedures governing the use or disposition of **school** buildings or space in **school** buildings which is not needed for **school** purposes." (§ 17388.) Requirements for the make-up of advisory committees are set forth in section *1417 17389. [FN16] The duties of such committees are described in section 17390. [FN17] Finally, **174section 17391 authorizes the decision not to appoint a committee in certain limited circumstances, which are not pertinent here.

> FN16. Section 17389 reads as follows: "A **school** district advisory committee appointed pursuant to Section 17388 shall consist of not less than seven nor more than 11 members, and shall be representative of each of the following:
>
> (a) The ethnic, age group, and socioeconomic composition of the district.
>
> (b) The business community, such as store owners, managers, or supervisors.
>
> (c) Landowners or renters, with preference to be given to representatives of neighborhood associations.
>
> (d) Teachers.
>
> (e) Administrators.
>
> (f) Parents of students.
>
> (g) Persons with expertise in environmental impact, legal contracts, building codes, and land use planning, including, but not limited to, knowledge of the zoning and other land use restrictions of the cities or cities and counties in which surplus space and real property is located."

> FN17. Section 17390 provides: "The **school** district advisory committee shall do all of the following:
>
> (a) Review the projected **school** enrollment and other data as provided by the district to determine the amount of surplus space and real property.
>
> (b) Establish a priority list of use of surplus space and real property that will be ac-

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ceptable to the community.

(c) Cause to have circulated throughout the attendance area a priority list of surplus space and real property and provide for hearings of community input to the committee on acceptable uses of space and real property, including the sale or lease of surplus real property for child care development purposes pursuant to Section 17458.

(d) Make a final determination of limits of tolerance of use of space and real property.

(e) Forward to the district governing board a report recommending uses of surplus space and real property."

B. Application

SLV CARE asserts the violation of these provisions, based on the District's appointment of two committees: the Superintendent's **School** Closure Committee (SSCC), which was convened prior to the April 2003 **school** closure decision; and the Surplus Property Advisory Committee (SPAC), which the District's Board appointed in October 2003.

1. Superintendent's School Closure Committee

[48] SLV CARE contends that the SSCC "did not comply with [§] 17387 et seq. The Committee was directed to evaluate four **schools**, but was given incorrect and incomplete information."

We reject that contention on both procedural and substantive grounds.

First, as to procedure, appellant failed to support its argument in its opening brief. Evidentiary support for appellant's contention is offered for the ***1418** first time in its reply brief. As a matter of appellate procedure, we generally do not consider points first raised in an appellant's reply brief. (See, e.g., *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10, 93 Cal.Rptr.2d 364.)

Second, on the merits, the contention is not persuasive. For one thing, the statute does not dictate what types or sources of information must be provided to an advisory committee. For that reason alone, SLV CARE has not shown a statutory violation. For another thing, it appears that the District made a good faith attempt to provide the committee with information that was complete and accurate. Although the SSCC might not have received every report in existence addressing the physical condition of the four **schools**, the committee's own reports demonstrate that it had evidence on some of the cited problems, such as the presence of mold in some classrooms and the current condition of the septic systems. Furthermore, with respect to particular reports that the committee did not have, SLV CARE fails to demonstrate prejudice from their absence. To the contrary, we find nothing in the cited reports to suggest that they would have affected the committee's recommendations. For example, the 1990 geotechnical report dismissed the Ben Lomond fault as "a potential earthquake source."

In short, we find no statutory violation by the District in connection with its Superintendent's **School** Closure Committee.

2. Surplus Property Advisory Committee

SLV CARE attacks the District's use of the SPAC on two grounds. First, it asserts, the District should not have made the decision to declare the property surplus; rather, that decision should have been left up to the committee. (See § 17390.) Second, it contends, the District violated the statute by failing to include representatives from all of the listed ****175** groups. (See § 17389.) On that point, SLV CARE observes, the District made a purposeful decision not to solicit socioeconomic information from the applicants.

In its statement of decision, the trial court refused to rule on the issues, concluding that the claim was not yet ripe. As the court explained: "Education Code [sections] 17387-[173]90 relate to the creation of an Advisory Committee prior to and relating to the 'sale, lease or rental of excess real property....' Those circumstances have not yet arisen."

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We agree with the trial court that appellant has no current cognizable claim under the statute. In pertinent part, section 17388 provides that a **school** district's governing board "*may,* and ... prior to the sale, lease, or rental of any excess real property ... *shall,* appoint a district ***1419** advisory committee ...." (§ 17388, italics added.) Given the circumstances here-with no surplus property then proposed to be sold, leased, or rented within the meaning of the statute-the District's use of the committee was discretionary, not mandatory. (See § 75 ["may" is permissive; "shall" is mandatory].) Because the SPAC was not a statutorily mandated committee, the District was not bound by the statutory requirements for its composition or duties.

C. Summary of Conclusions

As to appellant's claims concerning the Superintendent's **School** Closure Committee, even if they are not forfeited, they lack merit. The governing statute does not dictate what information must be provided to an advisory committee, and the record does not support the contention that the information provided was inaccurate or incomplete. Concerning appellant's complaints about the Surplus Property Advisory Committee, they are not cognizable under the statute. Under the circumstances presented here, the District's use of that committee was discretionary, not mandatory.

V. EVIDENTIARY RULINGS

Appellant SLV CARE next takes issue with the trial court's evidentiary rulings. It contends that the court erroneously sustained objections, by relying on grounds other than those stated in counsel's objection, and by relying on grounds that are not recognized under the Evidence Code, such as overbreadth. Taken as a whole, appellant asserts, those rulings demonstrate bias. SLV CARE also contends that the court committed error by allowing the District's bond counsel to testify to legal conclusions.

[49] As explained above, "an appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence." (*People v. Waidla, supra,* 22 Cal.4th at p. 717, 94 Cal.Rptr.2d 396, 996 P.2d 46. See also, e.g., *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1523, 3 Cal.Rptr.2d 833 [expert testimony].) "A trial court's exercise of discretion in admitting or excluding evidence ... will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice...." (*People v. Rodriguez, supra,* 20 Cal.4th at pp. 9-10, 82 Cal.Rptr.2d 413, 971 P.2d 618, citations omitted. See Evid.Code, §§ 353, 354.)

Applying those principles in this case, we find no basis for reversal.

[50] We first address appellant's claim that the court sustained numerous objections on erroneous grounds. Simply put, the record does not support that claim. In nearly all of the cited instances, either the objection or the ruling ***1420** had a cognizable ****176** basis, such as hearsay or lack of foundation. In cases where a question was challenged as overbroad, the court often asked counsel to narrow or rephrase it. Nor did the court's sua sponte rulings exceed the scope of its discretion. "It is well established that where questions are asked which are improper, the court acts within the scope of its duty in refusing to allow them to be answered, even though no objection be made." (*People v. White* (1954) 43 Cal.2d 740, 747, 278 P.2d 9. See also, e.g., *Kimic v. San Jose-Los Gatos Etc. Ry. Co.* (1909) 156 Cal. 379, 390, 104 P. 986, criticized on another point in *Lane v. Pacific Greyhound Lines* (1945) 26 Cal.2d 575, 583, 160 P.2d 21.)

We next consider the assertion that the court demonstrated bias against SLV CARE. The record also belies that assertion. Far from exhibiting bias, the court showed admirable patience and even-handedness. The record is replete with instances where the court accommodated appellant's trial counsel, giving them considerable latitude, accommodating them, and occasionally even suggesting alternate approaches for presenting evidence.

[51] Finally, we turn to appellant's argument that the court erred in permitting the District's bond counsel, William Kadi, to testify about the propriety of bond expenditures. We reject that contention. In this case, "there is no basis for concluding that the trial court relied on [the witness's] alleged legal conclusions...." (*Hankins v. El Torito Restaurants, Inc.* (1998) 63

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Cal.App.4th 510, 530, 74 Cal.Rptr.2d 684.) Instead, it appears that "the relevant portion of [his] testimony [was] his percipient testimony." (*Ibid.*) In ruling on the objection by appellant's trial counsel to the proffered testimony, the trial court acknowledged appellant's "right to object to Mr. Kadi expressing an opinion as to what I should find to be the law." But the court also noted Kadi's ability to address "factual issues in the case" and it therefore permitted his testimony. In its statement of decision, the court described Kadi's "opinions" as "somewhat self-serving" but characterized his "testimony" as "instructive to the court nonetheless." Given its comments, the trial court plainly understood its role as arbiter of the law. And because this was a bench trial, there was no danger of jury confusion. In short, we find no error in the court's decision to allow bond counsel to testify. Because we find no error, we need not consider prejudice. (*People v. Rodriguez, supra,* 20 Cal.4th at p. 10, 82 Cal.Rptr.2d 413, 971 P.2d 618.)

To sum up, this record discloses no abuse of discretion by the trial court in connection with the challenged evidentiary rulings.

*1421 VI. ATTORNEY FEES

[52] Appellant SLV CARE claims entitlement to an award of attorney fees, citing three different statutory provisions. As we now explain, none of those provisions supports appellant's claim for fees.

Appellant first relies on Code of Civil Procedure section 1021.5. That provision, sometimes called the "private attorney general" statute, authorizes an award of attorney fees to the "successful party" in certain actions resulting in the "enforcement of an important right affecting the public interest." (Code Civ. Proc., § 1021.5. See *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565, 21 Cal.Rptr.3d 331, 101 P.3d 140.) Here, however, appellant is not the successful party in this litigation. For that reason, there is no basis for a fee award in its favor under this statute.

[53] SLV CARE next claims entitlement to statutory fees under a provision of the California Public Records Act: **177Government Code section 6259, subdivision (d). That provision mandates an award of fees and costs to prevailing plaintiffs in CPRA actions, and it also insulates unsuccessful plaintiffs from liability for the agency's defense costs, unless the action is "clearly frivolous." (Gov.Code, § 6259, subd. (d). See *Filarsky v. Superior Court, supra,* 28 Cal.4th at pp. 427-428, 121 Cal.Rptr.2d 844, 49 P.3d 194.) "A plaintiff prevails within the meaning of the statute 'when he or she files an action which results in defendant releasing a copy of a previously withheld document.' " (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1391, 107 Cal.Rptr.2d 29.) In other words, "if a public record is disclosed only because a plaintiff filed a suit to obtain it, the plaintiff has prevailed." (*Ibid.*) Conversely, for purposes of the CPRA fee statute, a plaintiff has *not* prevailed where "substantial evidence supported a finding that the 'litigation did *not* cause the [agency] to disclose any of the documents ultimately made available....' " (*Ibid.*) This case falls into the latter category. Although SLV CARE contends that its action against the District resulted in the release of previously withheld public records, it offers no citation to the evidentiary record to support that contention. We therefore affirm the trial court's implied determination that SLV CARE did not prevail on its CPRA claims. We also affirm the trial court's award of costs to the District, as SLV CARE offers no argument that the cost award was improper under the statute. (Gov.Code § 6259, subd. (d).)

In its third and final fee claim, SLV CARE seeks statutory attorney fees pursuant to Government Code section 800. The factual predicate for an award of fees under that provision is "arbitrary or capricious action or conduct by a public entity." (Gov.Code, § 800.) In light of our affirmance of *1422 the judgment in the District's favor, there is no basis for concluding that the District's actions were arbitrary or capricious, and thus no basis for an award of statutory fees under Government Code section 800.

In sum, there is no basis for any of appellant's claims to attorney fees.

DISPOSITION

The judgment is affirmed. The District shall recover its costs on appeal.

WE CONCUR: ELIA, Acting P.J., and MIHARA, J.

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Cal.App. 6 Dist.,2006.
San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.
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SANTA BARBARA SCHOOL DISTRICT et al., Petitioners,
v.
THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; C. RAYMOND MULLIN et al., Real Parties in Interest.
C. RAYMOND MULLIN et al., Plaintiffs and Respondents,
v.
SANTA BARBARA SCHOOL DISTRICT et al., Defendants and Appellants
L.A. No. 30054., L.A. No. 30086.

Supreme Court of California
January 15, 1975.

SUMMARY

In a class action under a complaint alleging two causes of action concerning the validity of the composition and election of a city board of education and one cause challenging the validity of a desegregation plan adopted at a board meeting, the trial court filed a memorandum of intended decision declaring an intent to enjoin implementation of the plan and also expressing the court's intent with respect to the other causes. However, before findings and conclusions were filed, the Supreme Court issued an alternative writ of prohibition limited in effect to the part of the intended decision concerned with implementation of the plan. Judgment was rendered on the first two causes. (Superior Court of Santa Barbara County, No. 96260, John T. Rickard, Judge.)

The Supreme Court ordered defendants' appeal from the judgment transferred from the Court of Appeal to it for consideration simultaneously with the writ proceeding. The judgment was reversed and the cause remanded with directions to enter judgment for defendants on the two causes relating to validity of the election and composition of the board. And a peremptory writ of prohibition issued to restrain the trial court's intended action in all respects except in enjoining implementation of the desegregation plan which had purportedly been adopted. It was held that the board had been without jurisdiction to adopt the plan at the meeting as a result of the failure of the posted agenda for that meeting to give adequate notice that the particular plan would be considered at the meeting. Additionally, the court held that as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, but that the parts of the proposition which repealed Ed. Code, §§ 5002, 5003, declaring state policy of eliminating racial imbalance in schools, were severable from the invalid part and independently valid. And under the view that there is no constitutional right to a separate and elected elementary board of education and no unconstitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district, the Supreme Court held that the Santa Barbara Board of Education, which has been designated by the Legislature to govern the city's elementary school district, may lawfully be the common governing board of the city's high and elementary school districts, even though they are not coterminous.

In Bank. (Opinion by Sullivan, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Schools § 10--School Districts--Assignment of Pupils on Basis of Race.
Ed. Code, § 1009.6, which bars assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting either de jure or de facto segregation.

(2) Schools § 10--School Districts--Validity of Repealing Provisions of Initiative.
Inasmuch as a policy in favor of neighborhood schools is a reasonably conceivable one and such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the provisions found in §§ 2, 3, and 4 of Proposition 21, repealing Ed. Code, §§ 5002, 5003, which had declared the state policy of eliminating racial imbalance in schools and had delineated factors to be considered in implementing the policy, and also repealing certain administrative guidelines, cannot be struck down as

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constitutionally impermissible.

(3) Schools § 10--School Districts--Severability of Initiative Provisions.
The fact that, as enacted in Proposition 21, Ed. Code, § 1009.6, barring the assignment of pupils on the basis of race, is unconstitutional as applied to school districts manifesting segregation, does not necessarily invalidate the repealing provisions of the proposition, inasmuch as the repealing provisions are severable from the unconstitutional part not only mechanically, but also as to purpose and method, and are of independent validity and not inconsistent with the elimination of the invalid part.

(4a, 4b) Schools § 51 (5)--Administrative Officers--Boards--Meetings-- Jurisdiction.
Under Ed. Code, § 966, requiring the posting of an agenda 48 hours prior to a proposed meeting of a school board, the board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting. If the board wishes to change the agenda substantially within that period, it must postpone a meeting at least 48 hours. Thus, where concerned parents and citizens could reasonably infer from the posted agenda that only those desegregation plans which had been previously presented would be considered at the meeting, the board had no jurisdiction to consider or approve a plan which was not presented until that meeting and which differed substantially from all the previously presented plans.

(5) Schools § 51 (5)--Administrative Officers--Boards--Meetings--Posted Agenda.
The proper posting of a school board meeting agenda, as required by Ed. Code, § 966, cannot be replaced by newspaper publicity.

(6) Schools § 51 (6)--Administrative Officers--Boards--Rights, Powers and Duties--Desegregation.
In desegregating a school system, a school board is not limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation.

(7) Schools § 77--Actions and Liability--Judicial Control Over Official Acts--Prohibition.
Prohibition was available to prevent the trial court from exceeding its jurisdiction by carrying out its memorandum of intended decision, insofar as the decision would amount to a substitution of the trial court's views for those of a school board with respect to a matter within the board's discretion concerned with the closing down of certain schools.
[See **Cal.Jur.2d, Rev.**, Schools, § 217; **Am.Jur.2d**, Schools, § 52.]
(8) Schools § 51 (1)--Administrative Officers--One Board as Governing Districts Which Are Not Coterminous.
There is no constitutional right to a separate, elected elementary board of education and no constitutional infirmity in designating a city's board of education, elected from the full territory within its jurisdiction, to govern the lesser and wholly included elementary school district. Therefore, the Santa Barbara Board of Education, which has been designated by the Legislature to be the governing board of the city's elementary school district, and which is elected in compliance with the "one man, one vote" rule, may lawfully be the common governing board of the elementary and high school districts despite the fact that they are not coterminous. And election of the board is not subject to attack on the theory that the election is also an election of the governing board of the elementary school district and that such latter election violates the "one man, one vote" rule as causing the dilution of the votes of electors residing in the elementary school district by the votes of non-resident electors.

COUNSEL

George P. Kading, County Counsel, Robert D. Curiel, Chief Assistant County Counsel, Marvin Levine and Don H. Vickers, Deputy County Counsel, for Petitioners and for Defendants and Appellants.

Michael Lawson, A. L. Wirin, Fred Okrand, Laurence R. Sperber, Nathaniel S. Colley, Primo Ruiz, Fred J. Hiestand, Gene Livingston, Jerome B. Falk, Jr., William F. McCabe, Peter Galiano, Robert A. Stafford, Stafford, Buxbaum & Chackmak, Gervaise Davis III, Walker, Schroeder, Davis & Brehmer and Anthony G. Amsterdam as Amici Curiae on behalf of Petitioners.

Price, Postel & Parma, Gary R. Ricks and Hollister, Brace & Angle for Real Parties in Interest and for Plaintiffs and Respondents.

No appearance for Respondent.

Bagley, Bianchi & Sheeks, William T. Bagley, Robert L. McWhirk, Levy & Van Bourg, Victor J. Van Bourg and

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Stewart Weinberg as Amici Curiae. *319

SULLIVAN, J.

In this class action brought against two school districts and their common governing board of education, we are called upon to determine the validity of a desegregation plan for elementary schools. Our task also requires us to examine and pass upon the constitutionality of a recent initiative measure enacting certain anti-busing legislation and repealing existing statutes dealing with the prevention and elimination of racial and ethnic imbalance in pupil enrollment. Additionally we must examine the validity of the pertinent statute permitting the board of education in question to be the common governing board of the high school district and the elementary school district here involved. In essence, plaintiffs make two independent but cognate attacks - one against the board's plan and the other against the board itself. We take them up in that order, separately stating the facts proper to each. We first turn our attention to the desegregation plan.

I

Defendant Santa Barbara Board of Education (hereafter Board and referred to as defendant in the singular) is the common governing board of defendants Santa Barbara School District and Santa Barbara High School District. Defendant Norman B. Scharer is the Superintendent of Schools of Santa Barbara (superintendent).

Culminating a period of five years' planning and study aimed at correcting the racial imbalance in elementary schools, the Board on February 3, 1972, resolved "to move immediately toward the total desegregation of all Santa Barbara elementary schools beginning in September 1972." The Board adopted the following four-step procedure to effectuate this resolution: (1) the issuance by February 22, 1972, of a statement of policy on desegregation; (2) the creation of a "Task Force Committee for Desegregation," consisting of 22 members, to develop criteria for the study of proposed desegregation plans and to present such criteria to the Board no later than March 2, 1972; (3) the establishment of an "Education and Integration Study Committee," consisting of more than 100 members, under the chairmanship of the superintendent, to review various plans submitted for carrying out the desegregation-integration policy and to present to the Board, no later than May 4, 1972, two or three alternate plans; and (4) the determination that "[o]n May 18, 1972, this Board of Education will adopt one plan to be implemented as fully as possible in September 1972." *320

Both committees met numerous times and completed all work on schedule. On March 2, 1972, the Board adopted 12 criteria for guidance in reviewing the proposed desegregation plans. One of the criteria stated that any desegregation plan should "provide for optimum use of and be capable of being implemented within existing facilities."

Nine desegregation plans were received and studied initially by the "Task Force" and thereafter by the larger Education and Integration Study Committee. The latter committee by a vote of 74 to 4 recommended to the Board a specific desegregation plan known as the Hord-Mailes-Christian-Belden Plan, named after the four sponsoring elementary school principals. The committee also approved two alternate plans and prior to May 4, 1972, presented all three to the Board. These three plans, together with the West-Anderson plan not recommended by the committee, were formally presented to the Board at its meeting held on May 4, 1972.

Due to various objections raised by members of the Board in the ensuing discussion at that meeting, the superintendent decided to develop his own plan. On May 16, 1972, just two days prior to the Board meeting scheduled for final adoption of a desegregation plan, the superintendent announced, in an article appearing in the Santa Barbara News Press, that he proposed recommending a new desegregation plan at that meeting. The next day the same newspaper contained a longer article describing the general outlines of the so-called "Administration Plan." That night the plan was discussed at a meeting of the Education and Integration Study Committee. However, there was no time for study or review prior to the Board meeting the following night.

At its meeting on the next night - May 18, 1972 - the Board discussed the three plans recommended by the committee, the West-Anderson Plan and the Administration Plan. The last named plan was presented orally because it had not yet been reduced to writing. Despite two petitions signed by 3,000 people requesting a postponement for further study, the Administration Plan was adopted by the Board as orally presented. On June 8, 1972, the plan was summarized in writing and submitted to the State Department of Education for approval.

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On June 9, 1972, C. Raymond Mullin and Howard G. Larson, on behalf of themselves and of all other voters, parents and taxpayers similarly situated, commenced the instant action seeking: (1) a writ of mandate to compel a special election of the Board and (2) declaratory ***321** and injunctive relief to prevent the implementation of the allegedly unlawful and inadequate desegregation plan. The complaint contained three causes of action: The first two which we discuss separately (see Part II, *infra*) concerned the validity of the election and composition of the Board; the third cause of action alleged that the adoption of the Administration Plan by the Board was: (1) invalid for failure to give notice as required by the Education Code and (2) an abuse of discretion, in that the Board hurriedly adopted an inadequately studied plan which failed to desegregate all the elementary schools, despite the closing of two elementary schools altogether and the changing of the kindergarten to grade six pattern in two other schools.

Following an eight-day trial, the court filed a memorandum of intended decision. In respect to the third count [FN1] which attacked the validity of the Administration Plan, the court declared its intention to enjoin implementation of the plan. It rested this contemplated action on two bases. First, the court concluded that the Board had no jurisdiction to close the schools since it had failed to include notice of the proposed closure of two schools in its published agenda as required by section 966 of the Education Code. The court determined that the closure of the schools was such an integral part of the Administration Plan that the whole plan must fall. Secondly, the court concluded that the Board abused its discretion by adopting the Administration Plan requiring the closure of two schools since such closure was not reasonably necessary to the effective desegregation of the elementary schools.

> FN1 The memorandum of intended decision also included a proposed decision on the first two causes of action as well, which is discussed in Part II of this opinion.

Before findings of fact and conclusions of law, based on the court's memorandum of intended decision were filed, defendants presented to this court a petition invoking our original jurisdiction and seeking a writ of prohibition restraining the trial court from entering judgment in accord with the memorandum of intended decision. We issued an alternative writ of prohibition. [FN2] On August 28, 1972, plaintiffs petitioned this court to modify the alternative writ so as to omit any stay of the trial court's proposed order enjoining implementation of the plan. Since in issuing the alternative writ, we had determined that the petition had made a prima facie showing that the proposed action of the trial court ***322** was in excess of its jurisdiction and therefore that its proposed enjoining of the Administration Plan must be prohibited pending our final determination of the issue, we denied the petition for modification.

> FN2 As prayed for in the petition, the alternative writ of prohibition was limited in effect to the intended decision on the third cause of action. The trial court thereafter entered judgment on the first two causes of action and defendants appealed. We ordered such appeal transferred from the Court of Appeal to this court so that we could consider it simultaneously with the writ proceeding.

Subsequently an additional factor was injected into the resolution of the above proceeding with the adoption by the electorate at the general election held on November 7, 1972, of the initiative measure denominated Proposition 21. Section 1 of that proposition added to the Education Code section 1009.6 providing: "No public school student shall, because of his race, creed, or color, be assigned to or be required to attend a particular school." Sections 2 and 3 of Proposition 21 repealed sections 5002 and 5003 [FN3] respectively of the Education Code, which had declared the state policy of eliminating racial imbalance in California schools and had delineated the various factors to be considered in implementing this policy. Section 4 of Proposition 21, repealed the administrative guidelines toward achieving racial balance in the schools adopted by the State Board of Education. (§§ 14020 and 14021 of tit. 5 of the Cal. Admin. Code.) ***323**

> FN3 Section 5002 provides: "It is the declared policy of the Legislature that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices."

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Section 5003 provides: "(a) In carrying out the policy of Section 5002, consideration shall be given to the following factors:

"(1) A comparison of the numbers and percentages of pupils of each racial and ethnic group in the district with their numbers and percentages in each school and each grade.

"(2) A comparison of the numbers and percentages of pupils of each racial and ethnic group in certain schools with those in other schools in adjacent areas of the district.

"(3) Trends and rates of population change among racial and ethnic groups within the total district, in each school, and in each grade.

"(4) The effects on the racial and ethnic composition of each school and each grade of alternate plans for selecting or enlarging school sites, or for establishing or altering school attendance areas and school attendance practices.

"(b) The governing board of each school district shall periodically, at such time and in such form as the Department of Education shall prescribe, submit statistics sufficient to enable a determination to be made of the numbers and percentages of the various racial and ethnic groups in every public school under the jurisdiction of each such governing board.

"(c) For purposes of Section 5002 and this section, a racial or ethnic imbalance is indicated in a school if the percentage of pupils of one or more racial or ethnic groups differs significantly from the districtwide percentage.

"(d) A district shall study and consider plans which would result in alternative pupil distributions which would remedy such an imbalance upon a finding by the Department of Education that the percentage of pupils of one or more racial or ethnic groups in a school differs significantly from the district-wide percentage. A district undertaking such a study may consider among feasibility factors the following:

"(1) Traditional factors used in site selection, boundary determination, and school organization by grade level.

"(2) The factors mentioned in subdivision (a) of this section.

"(3) The high priority established in Section 5002.

"(4) The effect of such alternative plans on the educational programs in that district.

"In considering such alternative plans the district shall analyze the total educational impact of such plans on the pupils of the district. Reports of such a district study and resulting plans of action, with schedules for implementation, shall be submitted to the Department of Education, for its acceptance or rejection, at such time and in such form as the department shall prescribe. The department shall determine the adequacy of alternative district plans and implementation schedules and shall report its findings as to the adequacy of alternative district plans and implementation schedules to the State Board of Education. A summary report of the findings of the department pursuant to this section shall be submitted to the Legislature each year.

"(e) The State Board of Education shall adopt rules and regulations to carry out the intent of Section 5002 and this section."

Since the Administration Plan was adopted by the Board pursuant to and in furtherance of the repealed code sections, and since the plan involved the assignment of various ethnic minority students to certain schools in order to create a racial balance among the elementary schools in the district, Proposition 21, if valid, would provide an independent basis to support the trial court's intended invalidation of the Administration Plan. This court has, therefore, allowed various amici curiae to file briefs directed to the question of the validity and constitutionality of Proposition 21.

In 1970 the Legislature had added to the Education Code,

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FN4 section 1009.5 which provided: "No governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." This court in *San Francisco Unified School Dist.* v. *Johnson* (1971) 3 Cal.3d 937 [92 Cal.Rptr. 309, 479 P.2d 669] observed that this section was reasonably susceptible of two interpretations: "The ambiguity of section 1009.5 inheres in the phrase '*require*ee any student or pupil to be transported.' [Fn. omitted.] (Italics added.) One may 'require' a student to be transported by punishing a refusal or by physically forcing him onto a school bus; in a second sense, one may 'require' a student to be transported by *assigning* him to a school beyond walking distance of his home." (

> FN4 Hereafter, unless otherwise indicated, all section references are to the Education Code. *Id.* at p. 945.) We reasoned that if the section were construed to prohibit assignment of pupils to a school beyond a reasonable walking distance from the pupil's home it would be unconstitutional. Applying the doctrine that where possible a statute will be construed in a manner that would uphold its constitutionality, we accordingly held that "section 1009.5 does no more than prohibit a school district from compelling ***324** students, without parental consent, to use means of transportation furnished by the district." (*Id.* at p. 942.)

Shortly after our decision in *Johnson*, the Legislature passed the Bagley Act adding sections 5002 and 5003 (see fn. 3, *ante*) which directed school districts to "eliminate racial and ethnic imbalance in pupil enrollment" and specified certain factors to be considered in developing plans to achieve racial balance. The proponents of Proposition 21 in their published argument in support of the proposition characterized the Bagley Act as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." They asserted opposition to "mandatory busing for the sole purpose of achieving forced integration" and to "reassign[ing] pupils from their neighborhood schools to achieve racial and ethnic balance." Proposition 21 purported to eliminate this evil by repealing the Bagley Act (§§ 5002 and 5003), as well as the complementary administrative regulations, and by adding section 1009.6 which would prohibit forced integration and mandatory busing by denying the school district's power to assign pupils to schools on the basis of race.

Defendants and various amici curiae urge that Proposition 21 is unconstitutional in its entirety, both insofar as it added section 1009.6 and as it repealed sections 5002 and 5003 along with the administrative guidelines.

We declared in *Johnson* that section 1009.5, if construed to bar assignment of pupils to a school beyond reasonable walking distance "would be unconstitutional if applied to districts manifesting racial segregation, whether de jure or de facto in character." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 954.) Section 1009.6 which bars the assignment of pupils on the basis of race is unconstitutional in the same manner and for the same reasons set forth by us in *Johnson*. We deem it unnecessary to repeat here at length our rationale in that case; our opinion speaks for itself. We merely outline here its essentials, and underscore our conclusions with reference to subsequent United States Supreme Court cases.

First: We emphasized in *Johnson* that "Often the most effective program, and at times the only program, which will eliminate segregated schools requires pupil reassignment and busing. ... Since the U.S. Supreme Court has held that under the Constitution school boards in *de jure segregated districts* are 'clearly charged with the affirmative duty to ***325** take whatever steps might be necessary' to eliminate segregation 'root and branch,' a statute which would proscribe a principal, and in some cases essential and exclusive step to achieve that end, must obviously violate constitutional requirements." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d 937, 955.) (Italics added.)

Approximately three months after we expressed these views in *Johnson* in dealing with section 1009.5, the United States Supreme Court in *Board of Education v. Swann* (1971) 402 U.S. 43 [28 L.Ed.2d 586, 91 S.Ct. 1284] struck down a statute virtually identical with section 1009.6 FN5 (added to the code in 1972 by Proposition 21) with an unmistakably clear and forceful expression of the same constitutional mandate. "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid ... all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate dual school systems. [¶]

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Similarly, the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. ... [¶] We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race, 'or for the purpose of creating a balance or ratio,' will similarly hamper the ability of local authorities to effectively remedy constitutional violations." (

> FN5 North Carolina General Statutes section 115-176.1 (Supp. 1969) provides in relevant part: "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary bussing of students in contravention of this article is prohibited ...." *Id.* at p. 46 [28 L.Ed.2d at p. 589].)

Second: We further held in *Johnson* that section 1009.5 was unconstitutional as applied to school districts manifesting de facto as well as de jure racial segregation. Citing a number of decisions of lower federal courts (3 Cal.3d at p. 956, fns. 21-23), we observed that they had not drawn a clear distinction between de facto and de jure segregation and that some of them had defined de facto segregation as "that resulting from residential patterns in a nonracially motivated neighborhood school system." (*Id.* at p. 956, fn. omitted; citing inter alia, *Keyes v. School District Number One, Denver, Colorado* (D.Colo. 1970) 313 F.Supp. 61, 73-75; *Swann v. Charlotte-Mecklenburg Bd. of Educ.* (4th Cir. 1970) 431 F.2d 138, 141; 3 Cal.3d at p. 956, fns. 21 and 22.) We noted the necessary ***326** influence of school board decisions on the racial composition of residential areas.

Canvassing these federal precedents we concluded: "Thus under the current pattern of court decisions, neither school districts nor lower courts can determine with any confidence whether a pattern of school segregation should be classed as de facto or de jure. Consequently, if we held section 1009.5 unconstitutional only as applied to districts of de jure segregation, no school board in California ... could ascertain whether section 1009.5 could constitutionally apply within its district. Such a holding would, therefore, entail uncertain enforcement of section 1009.5, a confusion which would inhibit and delay school boards in their efforts to bring about full equality of educational opportunity. The *Green* decision [*Green v. County School Board* (1968) 391 U.S. 430 (20 L.Ed.2d 716, 88 S.Ct. 1689)] calls for desegregation now; a statute which imports confusion and delay in the uprooting of de jure segregation violates both the rule prohibiting partial enforcement of legislation, when such enforcement entails the danger of vague future application, and the mandate of the Supreme Court of the United States." (*San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 957.)

(1) This reasoning has been substantially buttressed by the recent decision of the United States Supreme Court in *Keyes v. School District, No. 1, Denver, Colo.* (1973) 413 U.S. 189 [37 L.Ed.2d 548, 93 S.Ct. 2686]. In *Keyes* the high court defined de jure segregation as "current condition of segregation resulting from intentional state action." (*Id.* at p. 205 [37 L.Ed.2d at pp. 561-562].) As potentially probative of an intentional segregative action on the part of school boards, the court referred to "policies and practices with respect to schoolsite location, school size, school renovations and additions, student-attendance zones, student assignment and transfer options, mobile classroom units, transportation of students, assignment of faculty and staff etc." (*Id.* at pp. 213-214 [37 L.Ed.2d at p. 566].)

The high court further emphasized that segregatory intent on the part of the school board is not limited to actions in the immediate present. "We reject any suggestion that remoteness in time has any relevance to the issue of intent. If the actions of school authorities were to any degree motivated by segregative intent and the segregation resulting from those actions continues to exist, the fact of remoteness in time certainly does not make those actions any less 'intentional.'" (*Id.* at p. 210 [37 L.Ed.2d at p. 564].) We read this to mean that a school board therefore can ascertain ***327** whether the segregation present in its district is de jure or de facto only by examining the full history of acts by the school authorities and determining if, at any time in that course of action, some acts were undertaken with segregatory intent. We think it is clear that no school board or lower court can ascertain with any degree of confidence whether section 1009.6 can constitutionally apply in its district and we further believe that therefore a determination by this court that section 1009.6 can apply to districts manifesting de facto segregation would involve uncertain enforcement and improperly delay elimination of de jure segregation.

The Supreme Court has continuously reiterated its com-

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mitment to eliminating de jure racial segregation and its unwillingness to accept any limitation upon procedures necessary to the resolute and thorough accomplishment of that task. To allow school authorities to rest content in the assumption that the pattern of segregation in their district is de facto and therefore to claim that section 1009.6 prohibits them from eliminating that segregation by pupil assignment on the basis of race implemented through busing, would impermissibly impede the constitutionally mandated task of rooting out de jure segregation. "[I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." (*Board of Education v. Swann, supra,* 402 U.S. at p. 45 [28 L.Ed.2d at p. 589].)

The high court has also recognized the discouraging fact of the "dilatory tactics of many school authorities"; the "failure of local authorities to meet their constitutional obligations [has] aggravated the massive problem of converting from the state-enforced discrimination of racially separate school [s]." (*Swann v. Board of Education* (1971) 402 U.S. 1, 14 [28 L.Ed.2d 554, 565, 91 S.Ct. 1267].) In view of this history, it is all too clear to us that the elimination of de jure segregation would be seriously impeded if school authorities could claim a legal disability to assign or bus pupils merely by asserting that the segregation in their district was de facto in origin.

Consistently with our earlier holding in *Johnson* and indeed under the compulsion of the decisions of the United States Supreme Court in *Swann* and *Keyes* which confirm our views in *Johnson*, we hold, as ***328** indeed we must, that section 1009.6 as applied to school districts manifesting either de jure or de facto segregation is unconstitutional.

We proceed to consider a related issue. It will be recalled that Proposition 21 not only added section 1009.6 but also repealed sections 5002 and 5003 as well as certain administrative guidelines. (See fn. 3, *ante.*) Various amici curiae urge that the repealing provisions of Proposition 21 (i.e., §§ 2, 3 and 4) are also unconstitutional, on two grounds: (1) the repeal of these sections significantly encourages and involves the state in racial discrimination and (2) even if constitutional in themselves, the repealing provisions are tainted by the unconstitutional portion of Proposition 21 and cannot be severed from it.

On the first point amici argue that our holding in *Mulkey v. Reitman* (1966) 64 Cal.2d 529 [50 Cal.Rptr. 881, 413 P.2d 825] compels the conclusion that the repealing provisions are themselves unconstitutional. In *Mulkey* we held unconstitutional as violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution, article I, section 26 of the California Constitution, an initiative measure appearing as Proposition 14 on the statewide ballot in the general election of 1964 and adopted by the electorate. That proposition nullified state statutes aimed at eliminating racial discrimination in housing and barred the state from legislating in the future so as to limit the right of private discrimination in the sale or leasing of property. We there focused on the distinction between racial discrimination resulting from state action and that resulting from the private acts of individuals, framing the issue before us thusly: "The only real question ... is whether the discrimination results solely from the claimed private action or instead results at least in part from state action which is sufficiently involved to bring the matter within the proscription of the Fourteenth Amendment." (*Mulkey v. Reitman, supra,* 64 Cal.2d at p. 536.) Finding the requisite state action, we concluded: "Here the state has affirmatively acted to change its existing laws from a situation wherein the discrimination practiced was legally restricted to one wherein it is encouraged .... Certainly the act of which complaint is made is as much, if not more, the legislative action which authorized private discrimination as it is the final, private act of discrimination itself. ... When the electorate assumes to exercise the lawmaking function, then the electorate is as much a state agency as any of its elected officials." (*Id.* at p. 542.) Amici contend that the repealing portions of Proposition 21 (i.e., §§ 2, 3 and 4) similarly were intended to, and will result in, preserving racial discrimination and ***329** segregation, in this instance in the school systems, and thus that the very passage of Proposition 21 involves the state in racial discrimination.

However, *Mulkey* is actually of no assistance to the amici's argument. The mere fact that the initiative measures in both instances - Proposition 14 in *Mulkey* and Proposition 21 in the case at bench - represent state action proves nothing, since in the instant case, the state, *independent of the passage of Proposition 21*, is involved in education. Indeed in *Mulkey* we noted this critical difference: "[I]n *Jackson v. Pasadena City School Dist.*, ... the state, be-

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cause it had undertaken through school districts to provide educational facilities to the youth of the state, was required to do so in a manner which avoided segregation and unreasonable racial imbalance in its schools." (*Mulkey v. Reitman, supra*, 64 Cal.2d at p. 537.) Proposition 21 by repealing the involvement of the state government in discharging the state's duty not to segregate, neither abrogated the school district's constitutional duty not to segregate nor removed the state from involvement through local school districts in the field of education. There is no problem of state involvement under the Fourteenth Amendment - it is simply a question whether the state involvement shall be solely by the local school districts or shall include involvement by the state government as well.

Amici curiae assert that, prior to the adoption of sections 14020 and 14021 of title 5 of the California Administrative Code and the passage of sections 5002 and 5003, local school districts had been very slow in seeking and achieving racial balance in the school system. As a result of the adoption of these sections and their enforcement in the courts, there was a significantly increased activity directed toward preventing, reducing and eliminating racial imbalance in the schools. It appears clear, amici argue, that the repeal pursuant to Proposition 21 (see fn. 3, *ante*, and accompanying test) of sections 5002 and 5003 will have the effect of retarding, if not reversing, this process of establishing racial balance in the schools of California. Finally, it is urged, the avowed purpose of Proposition 21 was opposition to these sections as a "forced integration measure ... which could only be accomplished through forced busing ... without regard to neighborhood schools or parental consent." (Ballot Pamphlet, argument in favor of Proposition 21, as presented to the voters of the State of California, General Election (Nov. 7, 1972).)

In one respect the gist of amici's argument is to ask this court to take judicial notice that local school districts fail to fulfill their constitutional obligation to desegregate, and thus to conclude that the passage of *330 Proposition 21 constituted state involvement in racial discrimination. Even if it were within our province to take such judicial notice, no facts have been presented to us supportive of amici's contention.

In another respect, the essence of the argument is to assert that the policy of the Legislature declared in sections 5002 and 5003 is inherently invulnerable to change through an initiative measure. On the contrary, since racial balance determined according to a precise statutory formula is not a constitutional prerequisite but a matter of state policy, the people of California through the initiative process, have the power to declare state policy. The repealing provisions of Proposition 21 can conceivably be interpreted as an expression by the people of this state of their preference for a "neighborhood school policy." (See *Keyes v. School Dist. No. 1, Denver, Colo., supra*, 413 U.S. at p. 206 [37 L.Ed.2d at p. 562].) We deem it unnecessary to the resolution of the issues now before us to determine precisely what was the intention of the electorate in this respect and accordingly intimate no views on the subject. (2) We merely conclude that since a policy in favor of neighborhood schools is a reasonably conceivable one and since such an expression of policy can in no way limit or affect the constitutional obligations of school districts, the repealing provisions found in sections 2, 3 and 4 cannot be struck down as constitutionally impermissible. It may be that our assessment of the people's desires in this respect is erroneous; if so, constitutional processes are available to the people to reinstate what has been repealed.

We turn now to the second point of the argument, namely that the repealing sections of Proposition 21 (i.e., §§ 2, 3 and 4) cannot be severed from the unconstitutional portion thereof (i.e., § 1 adding § 1009.6 to the Ed. Code) and therefore the proposition in its entirety must fall as unconstitutional.

The rule on severability is set forth in *In re Blaney* (1947) 30 Cal.2d 643, 655 [184 P.2d 892]: "But if the statute is not severable, then the void part taints the remainder and the whole becomes a nullity. It is also true that in considering the issue of severability, it must be recognized that the general presumption of constitutionality, fortified by the express statement of a severability clause, normally calls for sustaining any valid portion of a statute unconstitutional in part. *This is possible and proper where the language of the statute is mechanically severable*, that is, where the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words. [Citations.] On the other hand, where there is no possibility of mechanical severance, as where the *331 language is so broad as to cover subjects within and without the legislative power, and the defect cannot be cured by excising any word or group of words, the problem is quite different and more difficult of solution." (Italics added.) (In accord: *Villa v. Hall* (1971) 6 Cal.3d 227, 236 [98 Cal.Rptr. 460, 490 P.2d 1148]; *Mulkey* v. *Reitman, supra*, 64 Cal.2d 529,

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543-544; *In re Portnoy* (1942) 21 Cal.2d 237, 242 [131 P.2d 1]; *In re Bell* (1942) 19 Cal.2d 488, 498 [122 P.2d 22]; *Bacon Service Corporation* v. *Huss* (1926) 199 Cal. 21, 32-33 [248 P. 235]; *McCafferty* v. *Board of Supervisors* (1969) 3 Cal.App.3d 190, 193 [83 Cal.Rptr. 229].)

Proposition 21 contained a severability clause. [FN6] The valid repealing portions can easily and accurately be mechanically severed from the invalid portion enacting section 1009.6. "Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable. [Citation.]" (*McCafferty v. Board of Supervisors, supra*, 3 Cal.App.3d at p. 193.) Such a clause plus the ability to mechanically sever the invalid part while normally allowing severability, does not conclusively dictate it. The final determination depends on whether "the remainder ... is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute" (*In re Bell, supra*, 19 Cal.2d 488, 498) or "constitutes a completely operative expression of the legislative intent ... [and] are [not] so connected with the rest of the statute as to be inseparable." (*In re Portnoy, supra*, 21 Cal.2d at p. 242.)

> FN6 "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Amici curiae merely assert that the various portions of the proposition are clearly inseparable. However, it seems that the valid and invalid portions of the proposition, while subsumed within an overall purpose to eliminate forced integration by busing without regard to the desirability of maintaining neighborhood schools, reflect separable methods of achieving this purpose. The repealing provisions (the valid part) would eliminate a commitment to achieving racial balance in the schools, leaving local school districts with sole responsibility and without direction other than constitutional mandate; the enactment of section 1009.6 (the invalid part) went further and forced upon the local school districts the neighborhood school concept without forced busing as the only acceptable policy. Even though this restriction of local school *332 district discretion is unconstitutional and therefore the full purpose of Proposition 21 cannot be realized, it seems eminently reasonable to suppose that those who favor the proposition would be happy to achieve at least some substantial portion of their purpose, namely to eliminate a state commitment to racial balance in the schools regardless of other considerations, and thereby to allow local control subject only to constitutional restriction. (3) Thus, the repealing provisions are not only mechanically severable in that they are physically separate sections of the proposition, but they are also severable as to purpose and method, of independent validity and not inconsistent with the elimination of the invalid part. We hold the repealing portions of Proposition 21 to be severable. We cannot say that these portions must necessarily fall, because we hold section 1009.6 unconstitutional. [FN7]

> FN7 Amici curiae also urge that a different test should be applied to the severability of portions of an initiative measure than the above described test applied to statutes passed by the Legislature. However, in applying settled rules of severability, we can discern no meaningful distinctions between statutes "enacted" by the people and statutes enacted by the Legislature. The cases cited by amici curiae (e.g., *Bennett v. Drullard* (1915) 27 Cal.App. 180 [149 P. 368]; *Alexander* v. *Mitchell* (1953) 119 Cal.App.2d 816 [260 P.2d 261]) involved the question of severability prior to submission to a vote and also tested severability by the degree of integration between the valid and invalid parts. However, integration is determined by the test set forth by us *supra*.

We therefore conclude that Proposition 21 does not provide an independent basis for sustaining the trial court's intended injunction of the implementation of the Administration Plan since section 1009.6 added to the Education Code by the proposition bars assignment of public school students by race and is therefore unconstitutional and void under the decisional law of the United States Supreme Court and of this court, regardless of the proposition's effective repeal of other sections of the code.

We accordingly proceed to address ourselves to the question whether entry of judgment by the trial court on the third count in accord with its memorandum of intended decision would be an act in excess of its jurisdiction. As we have already stated, the court intended to enjoin implementation of the Administration Plan on two grounds: (1)

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that the Board had no jurisdiction to close the Garfield and Jefferson Schools because it had failed to include notice of the proposed closure of these schools in its published agenda as required by section 966; (2) that the Board abused its discretion in adopting the Administration Plan which required the closure of the above two schools, when in fact their closure was not reasonably necessary to effective desegregation. *333

Section 966 requires a school board to act at meetings open to the public, with certain exceptions relating to personnel and pupil discipline matters, and to post an agenda 48 hours prior to the meeting containing "[a] list of items that will constitute the agenda for all regular meetings." [FN8] In *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196 [95 Cal.Rptr. 650], the court held the provisions of section 966 are mandatory, so that noncompliance therewith by failing to list an item of business on the agenda invalidates the board's action in respect thereto. In *Carlson* the school board's agenda listed as one item "Continuation school site change." The action in fact taken was to move the "continuation school" to the Canyon View school building, to discontinue elementary education at that school, and to transfer the Canyon View elementary pupils to Ponderosa School. The court held that the agenda listing "was entirely inadequate notice to a citizenry which may have been concerned over a school *closure* ... was entirely misleading and inadequate to show the whole scope of the board's intended plans." (*Carlson v. Paradise Unified Sch. Dist., supra*, 18 Cal.App.3d at p. 200.)

FN8 Section 966 provides in pertinent part: "Except as provided in Section 54957 of the Government Code or in Section 967, all meetings of the governing board of any school district shall be open to the public, and all actions ... shall be taken at such meetings and *shall* be subject to the following requirements: ... (b) A list of items that will constitute the agenda for all regular meetings *shall* be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting ...." (Italics added.)

In the case at bench, the posted agenda of the meeting of May 18, 1972, contained under the heading "Desegregation/Integration Plans" Item No. 3a which read as set forth in the margin. [FN9] At the meeting, the Board adopted the Administration Plan, which among other things, closed the Jefferson School and discontinued elementary school education at the Garfield School.

FN9 Item 3a headed "Desegregation/Integration Plans" read as follows:

"On February 3, 1972 the Board of Education set the following timetable in regard to a Desegregation/Integration Plan for the Elementary District:

"Thursday, May 4, 1972 - Presentation of plans to the Board
"Thursday, May 18, 1972 - Adoption of a plan by the Board
"September 1972 - Implementation of plan as fully as possible

"It is expected that the Board will take action at the meeting."

The trial court in its memorandum of intended decision concluded: "There was no possible way [the Administration Plan was not written and was not on file] that the public could discern from the posted agenda that the Board was about to consider the closure of two elementary schools, namely, Jefferson and Garfield, as indispensable ingredients of *334 any desegregation plan. ... Any possible reference to such matters in a published newspaper article would in no event suffice to cure the deficiency. ... The Board did not comply with the provisions of section 966. It therefore lacked jurisdiction to adopt the Administration Plan .... The closure of the Jefferson and Garfield elementary schools is essential to this plan, and invalidates the same."

The Board contends that by listing adoption of a desegregation/integration plan, the posted agenda gave full and adequate notice of a wide range of possible Board actions including possible closure of schools. It is common knowledge that a desegregation/integration plan by its very nature involves a complete reworking of the school system and is likely to involve substantial changes in school at-

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tendance patterns, including pupil assignment away from neighborhood schools and busing. Thus, the agenda item gave fair warning to parents of students at any of the elementary schools that the adoption of a plan might result in their children's not attending their neighborhood school, that is Jefferson, Garfield or any other elementary school, as the case might be. The fact that their children might end up attending a different school due to closure of their current school rather than to pupil assignment or school pairing is of little moment. The critical point is that parents were on notice that the Board at its meeting on May 18, 1972, might act in such a way that their children would no longer be able to attend Jefferson or Garfield schools.

This case is therefore clearly distinguishable from *Carlson*. There the item "continuation school site change" would have in no way notified parents of children attending Canyon View Elementary School that their children would be affected by such action and certainly would not have warned them that the school might be closed. It gave fair notice to parents of continuation school students as to impending changes and to people generally concerned about financial expenditures and priorities. However, the item in no way warned Canyon View Elementary School parents that their interests might be vitally affected.

In the case at bench, by contrast, the item concerning the adoption of a "Desegregation/Integration Plan," in our view gives clear notice to parents of students attending Jefferson, Garfield or any other elementary school that their interests might be vitally affected. We do not believe that the agenda item must specify the particular means by which the students involved would be sent to different schools, as for example by pupil assignment, busing, pairing of schools or closure of schools. It ***335** seems to us that all such actions are fairly contained within the comprehensive language of the notice.

Indeed, if the agenda had simply indicated the adoption of a "Desegregation/Integration Plan for the Elementary District," we would entertain no doubt that it would have given adequate notice. However, item 3a on the agenda referred to the sequence of procedures adopted by the Board for formation of an integration plan throughout the year - "Thursday, May 4, 1972 - Presentation of plans to the Board. Thursday, May 18, 1972 - Adoption of a plan by the Board." (See fn. 9, *ante*.) Concerned parents and citizens could reasonably infer from this notice that no new plans were to be presented on May 18 but rather that the Board would adopt one of the plans presented on May 4. If they had no objection to any of these plans, they might reasonably assume there was no need for them to attend the May 18 meeting.

However, the Administration Plan, which had *not* been presented at the May 4 meeting, differed radically from all the previous plans in many respects, most notably in providing for the closure of the Jefferson and Garfield schools. Parents of Jefferson and Garfield elementary school students had no notice that a plan involving closure of those two schools would be considered on May 18. Consequently we think that the notice by referring to the May 4 presentation of plans was misleading, by indicating that only those plans presented on May 4 would be considered for adoption on May 18. This is substantially confirmed by the very elaborate procedures adopted by the Board and participated in by the community in order to prepare and screen plans for presentation to the Board on May 4.

(4a) Section 966 specifies 48 hours' notice with respect to regular meetings. It is a fair construction of the section that a board cannot change its posted agenda within the 48-hour period next immediately preceding a regular meeting; in other words, if a board wishes to change substantially its agenda within that period, it must postpone a meeting at least 48 hours. Since the Administration Plan had not been presented at the May 4 meeting and since it differed substantially from all the other plans, the Board's decision to consider and act upon it represented a substantial deviation from the posted agenda and therefore required an amendment to the agenda and a postponement of the meeting for such a period of time as to provide no less than 48 hours' notice.

It is true that the Board could have adopted a plan involving the ***336** closure of schools, if it had posted an agenda merely giving general notice of intention to adopt a desegregation/integration plan. However, once the Board posted notice that it would adopt one of the plans theretofore presented at the May 4 meeting, it thereby limited its power to consider any other substantially different plan since otherwise the posted agenda would be fatally misleading. It then became necessary for the Board to amend the posted agenda and reschedule the meeting so as to afford notice for the period of time specified by the statute.

The Board contends that the misleading effect of the notice was cured by newspaper publicity indicating that a new

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plan was to be presented at the meeting of May 18. Two newspaper articles appeared explaining some of the details of the new plan. Only one of the two articles was released 48 hours or more before the meeting. (5) Moreover, newspaper publicity cannot replace the proper posting of an agenda. Section 966 requires notice by means of an agenda posted at a specified place. The newspaper article had no official status, its contents had not been checked or authorized by the Board, and there was no guaranty that it would have been read by all persons entitled to notice. On the other hand, under the statute all persons were presumed to know when and where the agenda of a meeting was to be posted and were entitled to rely on the contents of such statutory notice without being required to scour all newspapers and other publications for possible changes.

(4b) Accordingly we conclude that the trial court properly determined, albeit for the wrong reason, that the Board had no jurisdiction to consider or approve the Administration Plan due to its noncompliance with section 966. The trial court would therefore not act in excess of its jurisdiction in enjoining the implementation of the Administration Plan, unless and until the plan was adopted by the Board at a meeting preceded by the posting of an accurate and complete agenda as required by section 966.

The trial court, however, went further in its memorandum of intended decision and purported to permanently enjoin implementation of the Administration Plan on the ground that its adoption was an abuse of discretion by the Board since the closure of the two schools was not reasonably necessary to accomplish desegregation. [FN10] (6) The major premise in the trial court's reasoning - that in desegregating a school *337 system, a school board is limited in the exercise of its powers to those acts reasonably necessary to effectuating desegregation - is utterly without support. The trial court concedes, as indeed it must, that the Board has power to close schools and convert them to other uses. It is, of course true that the Board is not free to exercise this power arbitrarily, but must act reasonably and in accordance with established procedure. "[A] court may not substitute its judgment for that of the administrative board [citation] and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld." (*Manjares v. Newton* (1966) 64 Cal.2d 365, 371 [49 Cal.Rptr. 805, 411 P.2d 901].) We have not found, nor have we been referred to, any authority supportive of the proposition that once a school board undertakes a desegregation/integration plan, its otherwise independent power to close schools becomes limited to closing only those schools which must reasonably be closed in order to accomplish desegregation. Acceptance of such a proposition would blind school boards to the full realities of the world about them, as for example, by directing in effect that they are powerless to close unsafe schools because desegregation might be effectuated without such closure.

> FN10 Plaintiffs also contend that the Board abused its discretion in adopting the Administration Plan because the plan does not meet the requirements of section 5003. Since we have held the repeal of this section valid, this argument must fail.

Indeed the case at bench presents exactly this situation. On August 12, 1971, the Board received a report that the Jefferson school was structurally unsafe within the requirements of section 15503. [FN11] The report recommended that a structural engineer be retained to determine whether the school should be repaired or abandoned, since if it cannot be repaired, it must be abandoned pursuant to section 15516. [FN12] On May 15, 1972, three days before the final meeting of the Board, the superintendent received a report concerning the rehabilitation or replacement costs of the Jefferson school. The report found that it would cost $621,800 to make the existing structure safe and $655,000 to build an entirely new building. Accordingly, in fashioning the Administration Plan, the superintendent made provision therein for closing the Jefferson school. The Board would certainly be properly exercising its discretion in a reasonable manner were it to approve abandoning this building in view *338 of the extreme cost. The determination of the questions whether a new school was needed to replace this structure or whether existing facilities could handle the Jefferson school students due to an expected drop in elementary enrollment, was properly within the Board's discretion. We do not think that the Board in exercising this discretion was perforce limited to determining the reasonable necessity of replacing the building and thus automatically precluded from determining the necessity of assigning students in order to achieve desegregation.

> FN11 Section 15503, added in 1959 as part of the Field Act, requires all school buildings, not constructed pursuant to the Field Act, to be examined by January 1, 1970, in order to determine whether the building is safe for school use according to the standards set forth in the Field Act (§ 15451 et

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seq.). If a school building is found to be unsafe, the governing board of that school district must prepare an estimate of the cost necessary to make the building safe.

FN12 Section 15516 provides: "No school building examined and found to be unsafe for school use pursuant to Section 15503 and not repaired or reconstructed in accordance with the provisions of this article shall be used as a school building for elementary and secondary school or community college purposes after June 30, 1975."

In 1969 the Board adopted a master plan to guide the development of the school district. Item 6 of that plan provided: "As soon as funds become available in the Elementary District to provide housing at expanded schools elsewhere, that Garfield School be closed and converted to a Special Education Center to provide for certain parts ... of the Special Education program." The superintendent incorporated this provision into his Administration Plan. Absent proof that there were no school facilities to absorb these students or no need for a special education center, [FN13] the Board, in the reasonable exercise of its discretion, could lawfully take this action. The mere fact that this action was part of a desegregation plan did not automatically strip the Board of its otherwise subsisting authority to act in this area, so that the establishment of an education center was contingent upon it being reasonably necessary to accomplish desegregation .

FN13 School boards have the authority to provide special education programs and facilities. (§§ 6500-6742, 6750-6946.)

(7) Since the trial court proposed to so limit the discretion of the Board, it would be substituting its judgment for that of the school board and therefore acting in excess of its jurisdiction. A writ of prohibition is the appropriate remedy where a threatened judgment of the trial court will be in excess of its jurisdiction. (*City & County of S.F.* v. *Superior Court* (1959) 53 Cal.2d 236, 243 [1 Cal.Rptr. 158, 347 P.2d 294]; 5 Witkin, Cal. Procedure (2d ed. 1971) Extraordinary Writs, §§ 36, 39, pp. 3810-3811, 3813.)

As to the instant writ proceeding (L.A. 30054) which is confined to plaintiffs' third cause of action below, we arrive at these final conclusions: (1) That section 1009.6 being unconstitutional and void does not bar the Board's Administration Plan for desegregation; (2) that the Board's power to close schools exists independently of its constitutional obligation to desegregate and is not contingent upon such closure being ***339** reasonably necessary to effectuate desegregation; (3) that the posted agenda was defective insofar as it related to the closure of the two elementary schools because of the Board's failure to comply with section 966 and that, since said proposed action for closure was an inseparable part of the Administration Plan, the adoption of the plan as a whole was invalid because of such noncompliance; and (4) that in respect to the third count the trial court will not act in excess of its jurisdiction by enjoining the implementation of the Administration Plan upon the basis heretofore set forth by us, namely, for the failure of the Board to comply with section 966 but that in all other respects the intended action of the trial court as set forth in its memorandum of intended decision is in excess of the court's jurisdiction. Nothing herein, of course, shall prevent, or be deemed to prevent, the Board from adopting the Administration Plan at a new meeting held upon proper notice and in compliance with all other legal requirements.

It follows that in L. A. 30054, petitioners (defendants below) are not entitled to a peremptory writ of prohibition restraining respondent court from enjoining the implementation of the Administration Plan for failure of the Board to comply with section 966 but are entitled to such writ restraining the court's intended action in all other respects. (See *Brown v. Superior Court* (1949) 34 Cal.2d 559, 566 [212 P.2d 878]; see 5 Witkin, Cal. Procedure (2d ed. 1971) p. 3933.) The writ shall issue accordingly.

II

We now turn our attention to the appeal before us. (See fn. 2, *ante*.) This is from a judgment entered on the first two causes of action which were not stayed by our alternative writ of prohibition. The central issue here confronting us is whether the Board may lawfully be the common governing Board of both the Santa Barbara (elementary) School District and the Santa Barbara High School District despite the fact that such districts are not coterminous.

We deem it necessary to set forth the facts in some detail. The original Santa Barbara School District, which was organized sometime in the 1870's, comprised all the public schools within the city limits and conducted classes from

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kindergarten through high school, under the leadership of the school trustees. The initial charter for the City of Santa Barbara, adopted February 20, 1899, created a school department, consisting of all the public schools in the school district, governed by a ***340** five-man board of education. The charter specified the duties and powers of the board of education in great detail and provided that the board succeeded to all the property and rights of the former school trustees.

In 1902 this single geographical school district was divided functionally into two separate districts: the elementary school district (known as the Santa Barbara School District) and the high school district (known as the Santa Barbara High School District), comprising both junior and senior high schools. The two districts were coterminous; their boundaries were the city limits. The single board of education remained responsible for the governing of all the public schools in the school districts, since the charter was not amended following this functional division into two school districts. Upon the adoption of new charters in 1918 and again in 1927, former provisions dealing with the board of education were revised and simplified by replacing the detailed enumeration of the board's duties and powers with an incorporation of provisions set forth in the general laws of the state. Despite these revisions, nevertheless, the new charters retained a *single* board of education invested with control over all schools in that city. [FN14]

> FN14 Section 83 of the Charter of the City of Santa Barbara adopted in 1927 provided:"The Board of Education shall consist of five members. ..."
>
> Section 84 provided: "The Board of Education shall have the entire control and management of the public schools in the city of Santa Barbara in accordance with the constitution and general laws of the state and said board is hereby vested with all the powers and charged with all the duties of such control and management."
>
> Sections 55 and 56 of the charter adopted in 1918 contained virtually identical provisions.

Indeed the 1927 charter specified a single board of education even though the two school districts were no longer coterminous themselves or with the city. From 1902 to 1930 while the elementary school districts remained virtually constant in size, incorporating only minor portions of adjacent unincorporated territory, the high school district annexed large portions of adjacent territory and far outstripped the elementary school district in size. By 1930 the pattern of annexations was complete. The high school district was comprised of the original high school district (i.e., coterminous with the city limits and the elementary school district) plus the geographical area of four additional elementary school districts, Montecito Union School District, Cold Springs School District, Hope School District and Goleta Union School District. These four elementary school districts were annexed solely for the purpose of becoming part of the Santa Barbara High School District. They continued to function as ***341** wholly independent elementary school districts governed by their own elementary school board.

Despite these changes in the composition and size of the elementary and high school districts no change was made in the charter. That instrument continued to direct, as it did upon its adoption in 1927 that there be a single board of education having the entire control and management of all the public schools. In 1939, section 83 of the charter (see fn. 14, *ante*) was amended to provide that the members of the board should serve staggered six-year terms.

No further changes were made in the charter provisions concerning the board of education until a new charter was adopted in 1967. The new charter retained the provision for a single elective board of education, directed that its adoption should not affect boundaries of existing school districts and generally provided that all other requirements should be "as now or hereafter prescribed by the Education Code." [FN15] Despite the changes in language the new charter provisions continued essentially the same educational scheme. The changes appear to correspond with those introduced into the Education Code in 1963, since section 900 of the charter tracks the language of section 1223 of the code. [FN16] Thus, in short the charter directs that there shall be an elective board of education and leaves other requirements to those found in the code.

> FN15 Article IX of the charter headed, Board of Education, provides: "Section 900. State Law Governs. The manner in which, the times at which, and the terms for which the members of the Board of Education shall be elected or appointed, their qualifications, compensation and removal and the number which shall constitute

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such board shall be as now or hereafter prescribed by the Education Code of the State of California.

"Section 901. Effect of Charter on District. The adoption of this Charter shall not have the effect of creating any new school district nor shall the adoption of this Charter have any effect upon the existence or boundaries of any present school district within the City or of which the City comprises a part."

FN16 Section 1223 of the Education Code provides: "Except as provided in Section 1222, whenever the charter of any city fails to provide for the manner in which, the times at which, or the terms for which the members of the city board of education shall be elected or appointed, for their qualifications, removal, or for the number which shall constitute such board, the provisions of this division shall apply to the matter not provided for."

Section 1224 provides that the members of the board of education shall be elected at large from the territory within the boundaries of the school district or districts under the jurisdiction of the board of education, that for election purposes such territory shall include outside territory annexed to the city for school purposes, and that all qualified electors residing within the full territory shall be eligible to vote for, and ***342** to be a member of, the board of education. [FN17] Therefore all qualified electors residing within the high school district, which is geographically coterminous with the five elementary school districts - the Santa Barbara elementary school district plus the four annexed districts (Montecito, Cold Springs, Hope and Goleta) - are entitled to vote for the city board of education. At the time of trial, there were 80,203 registered voters residing within the high school district, of whom 38, 174 or 47.6 percent resided within the Santa Barbara elementary school district and 42,029 or 52.4 percent resided within the four annexed elementary school districts.

FN17 Section 1224 provides: "The members of any elective city board of education shall be elected at large from the territory within the boundaries of the school district or districts which are under the jurisdiction of the city board of education, whether sitting as a board of education, high school board, or community college board, and any qualified elector of the territory shall be eligible to be a member of such city board of education.

"When outside territory has been annexed to a city for school purposes it shall be deemed a part of the city for the purpose of holding the general municipal election, and shall form one or more election precincts, as may be determined by the legislative authority of the city. The qualified electors of the annexed territory shall vote only for the board of education or the board of school trustees."

The four annexed elementary school districts continued to be governed by four separate elementary school boards elected separately by qualified electors residing within each elementary school district. The Santa Barbara elementary school district, however, did not have its own separate elementary school board. Instead, by virtue of the charter provisions and section 1222 of the Education Code incorporated in the charter (see fn. 15, *ante*), the Santa Barbara elementary school district was governed by the city board of education. [FN18] Thus, an elector residing within one of the four annexed districts, for example Montecito, would be entitled to cast two votes - one to elect members to the Montecito Elementary School Board from the residents within that district and one to elect members to the city board of education. An elector residing within the Santa Barbara elementary school district would be entitled to cast only one vote - that one being to elect the city board of education.

FN18 Section 1222 provides: "Whenever the charter of a city comprising in whole or in part an elementary school district, fails to provide for the manner in which, the times at which, and the terms for which the members of the board of education of such city are appointed, and for the number which shall constitute such board, *the governing board of the elementary school district* within which the city is located or with which the city is coterminous *is the board of education of the city*." (Italics added.)

As mentioned earlier, plaintiffs in their first two causes of action challenge the validity of the law permitting the city board of education to govern both the high school and the elementary school districts, despite the fact that the two

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districts are not coterminous. The first cause of *343 action alleged that this system unconstitutionally diluted the vote of each registered voter and taxpayer within the elementary school district by over 100 percent by virtue of the votes cast by that portion of the electorate who live outside the Santa Barbara elementary school district. The second cause of action alleged that this system violated the requirements of section 924 that the governing board of an elementary school district shall consist of members elected at large from the territory comprising the elementary school district.

Following trial by the court on these two causes of action, the court made findings of fact, substantially as recited above and concluded in essence that the above voting scheme was unconstitutional as being violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. We set forth in pertinent part in the margin the court's detailed conclusions. [FN19] *344

> FN19 "4. Insofar as the Board governs the affairs of the Elementary School District the scheme which permits the votes of 38,174 resident electors to be counted equally with the votes of the 42,029 non-resident electors, who are in no way concerned with the government of the Elementary District, constitutes a clear denial, dilution and debasement of the vote of the resident electors of the Elementary District and a deprivation of their constitutional right to the equal protection of the law.
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> "7. The present dual function of the School Board governing a large high school district and much smaller elementary school district does not serve any governmental purpose, but is rather the result of unplanned, irregular annexations to the High School District.
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> "
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> . . . . .
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> "9. The fact in this case that voters who reside outside the boundaries of the Elementary School District, who exceed in number those who reside within the district, are given the right to vote for the School Board which formulates policy for the district, even though they are in no way subject to such policy and do not contribute any tax support thereto, is contrary to the principle that the government is to be chosen by the governed.
>
> "10. The equal voting strength principle, which underlies the 'one person, one vote' doctrine, applies in this case to the electoral scheme currently employed in the election of members to the governing board of the Santa Barbara Elementary School District. That principle is violated because the votes of qualified resident electors in the plaintiffs' class are being wrongfully denied, debased and diluted by the votes of non-qualified, non-resident electors in the Elementary District election.
>
> "11. There is no State interest sufficiently compelling to justify the voting scheme described herein. That scheme is unconstitutional. It violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.
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> "
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> . . . . .
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> "14. To interpret Section 1224 of the Education Code to sanction the election of a common governing board for two districts whose boundaries are not coterminous, by electing the members of such board at large from the territory of the larger district, which encompasses all of the area of the smaller district plus added territory of the larger district, is to unconstitutionally apply the statute.
>
> "15. Section 1224 of the Education Code must be interpreted to grant common governing powers to an elective city board of education over two or more districts under its jurisdiction only in cases where the boundaries of the governed districts are coterminous. In a case such as here presented, where the boundaries of the districts are not co-

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terminous, Section 1224 may not be so interpreted to grant multiple jurisdiction to such a single elective board."

By way of remedy the court concluded that the Santa Barbara elementary school district must be governed by an independent board of resident electors of the Santa Barbara elementary school district elected at large from the territory within the elementary school district; that the present city board of education should be allowed to continue as the governing board of the high school district; that a new board consisting of five members and governing only the elementary school district should be elected on April 17, 1973, by resident electors within the Santa Barbara elementary school district and take office on July 1, 1973; that the three members with the highest vote should serve until June 30, 1977, and the remaining two members should serve until June 30, 1975, each member of the board thereafter serving a four-year term. Judgment granting a peremptory writ of mandate was entered accordingly. This appeal by defendants followed. [FN20]

FN20 See footnote 2, *ante*, where the procedural history of this appeal as related to the disposition of the third cause of action is explained.

We begin by epitomizing the respective positions of the parties on the appeal. Plaintiffs contend that the method of electing members of the Santa Barbara Board of Education is invalid under the state and federal Constitutions as violative of the "one man, one vote" principle because the votes of *qualified, resident* electors in the elementary school district are debased and diluted by the votes of *nonqualified, nonresident* electors in the elementary district election. Plaintiffs argue that there should be, and the trial court properly ordered, a separate board of education to govern the elementary school district. Defendants, on the other hand, contend that the present method of electing members of the Board complies with applicable state law, that it does not violate the "one man, one vote" rule, and that the trial court's ruling on this issue is in error. (8) As we explain, *infra*, we conclude that there is no constitutional right to a separate, elected elementary board of education, that there is no constitutional infirmity in designating the city board of education, elected from the full territory within its jurisdiction, to govern the lesser, wholly included elementary school district and that the "one man, one vote" principle has no relevancy to this case.

The city board of education is elected. Each qualified elector residing within the high school district, the largest geographical area within the ***345** jurisdiction of the board of education, is eligible to become a member of the board and is entitled to vote in the election. The members are elected at large. Each vote counts equally and is weighted equally. Each qualified elector is governed by the board, subject to the policy adopted by the board, and liable for tax to support the board. It is clear and undeniable that the city board of education is elected in full compliance with the "one man, one vote" principle.

Indeed, as they must, plaintiffs concede the election of the city board of education is valid. However, plaintiffs claim that the election of the city board of education is also an election of the governing board of the Santa Barbara elementary school district and that the *latter* election violates the "one man, one vote" principle because the votes of nonresident electors dilute the votes of the electors residing in the Santa Barbara elementary school district. There is no basis in law or fact to support this claim. There is a single city board of education which is elected in a single election by qualified resident electors. This single city board of education, by virtue of section 1222, (see fn. 18, *ante*) is the governing board of the Santa Barbara elementary school district. [FN21] The city board of education, which is elected in accordance with section 1224 (see fn. 17 *ante*) is designated by the Legislature in section 1222 to govern the Santa Barbara elementary school district.

FN21 See test accompanying footnotes 15 and 16, *ante*.

Thus, it is abundantly clear that the election of the city board of education is a single election of a single board. The real claim advanced by plaintiffs is that they, the resident voters, taxpayers and parents within the Santa Barbara elementary school district are entitled to be governed by an independent school board, comprised of members who reside within the district and elected solely by voters who reside in the district. The United States Supreme Court has held to the contrary. In *Sailors v. Board of Education* (1966) 387 U.S. 105, 108, 110-111 [18 L.Ed.2d 650, 653, 655, 87 S.Ct. 1549], the high court held that there is no constitutional right to elect members of boards of education: "We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.

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... [¶] Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative *346 officers, a State can appoint local officials or elect them or combine the elective and appointive system as was done here. ... For while there was an election here for the local school board, no constitutional complaint is raised respecting that election. Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy."

The principles announced in *Sailors* were recently applied in California in *O'Keefe v. Atascadero County Sanitation Dist.* (1971) 21 Cal.App.3d 719 [98 Cal.Rptr. 878] to a factual situation so closely analogous to the facts in this case that we regard that case as highly persuasive authority. In *O'Keefe* the residents of the Atascadero sanitation district, which was located in San Luis Obispo County, challenged the procedure by which the directors of the sanitation district were selected. The county is divided into five districts for the purpose of electing the board of supervisors. The sanitation district was located wholly within the boundaries of one of the five supervisorial districts. The population within the sanitation district was approximately 10 percent of the county population. By virtue of state law, the directors of the sanitation district were the board of supervisors. Since the residents of the sanitation district lived wholly within one supervisorial district, they were able to vote for only one director, while the other nonresident voters elected the other four directors of the sanitation district. The sanitation district residents claimed that their votes were diluted and debased by the votes of electors who resided outside the sanitation district but within the county.

The court concluded, however, that the directors of the sanitation district were not elected but designated by the Legislature and that the election of a board of supervisors was a single election of a single board. "The board of directors of a county sanitation district is not elected. Rather, the members of such board are designated in Health and Safety Code section 4730. The composition of the board is determined by the location of the district in relation to other political subdivisions within the county. ... [FN4] [¶] Since the board of directors is not chosen by election, the 'one man, one vote' principle is not applicable .... Appellant argues that the principle nevertheless is applicable under the facts alleged, *347 because the county board of supervisors is elected [fn. omitted] and the members of the board of directors of the Sanitation District are 'in effect elected once removed.' ... [¶] Under section 4730 the members of the board of directors of a sanitation district are chosen by the Legislature, a method expressly sanctioned in *Sailors*." (*O'Keefe v. Atascadero County Sanitation Dist., supra*, 21 Cal.App.3d at pp. 724-726.)

> FN4 "Health and Safety Code section 4730: 'The governing body of a sanitation district is a board of directors of not less than three members. ... If the district includes no territory which is in cities or sanitary districts, then the county board of supervisors is the board of directors of the district.'"

As in *O'Keefe*, the members of the governing board of the Santa Barbara elementary school district are designated by the Legislature. The Legislature in section 1222 (see fn. 21, *ante*, and accompanying text) designates the city board of education to be the governing board of the Santa Barbara elementary school district. This is an entirely proper procedure under *Sailors*. The fact that the city board of education is elected does not somehow constitute an election "once removed" of the governing board of the Santa Barbara elementary school district just as the election of the county board of supervisors did not constitute an election "once removed" of the directors of the sanitation district in *O'Keefe*.

We discern no constitutional infirmity in a system whereby the Legislature designates an elected city board of education to govern a lesser included elementary school district. We hold therefore that the present method of electing members of the Santa Barbara Board of Education is not violative of either the United States Constitution or the California Constitution and is in all respects valid under applicable state law. [FN22]

> FN22 The second cause of action claiming that the system whereby the city board of education is designated to serve as the governing board of the Santa Barbara elementary school district violated the provisions of section 924 has apparently been abandoned, since the trial court made no mention of it and since it has not been urged on appeal. Moreover, section 1222 rather than section 924

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controls where a charter city with a city board of education is involved.

In L.A. 30054 let a peremptory writ of prohibition issue in accordance with the views herein expressed.

In L.A. 30086 the judgment is reversed and the cause is remanded to the trial court with direction to enter judgment in favor of defendants on the first and second stated causes of action set forth in plaintiffs' complaint. ***348**

Petitioners shall recover costs in L.A. 30054 and defendants shall recover costs in L.A. 30086.

Wright, C. J., McComb, J., Tobriner, J., Mosk, J., Clark, J., and Burke, J., [FN*] concurred. ***349**

FN* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

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187 Cal.App.3d 1104, 232 Cal.Rptr. 359
(Cite as: 187 Cal.App.3d 1104)

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY et al., Petitioners,
v.
THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT, Real Party in Interest.
No. E003041.

Court of Appeal, Fourth District, Division 2, California.
Dec 11, 1986.

SUMMARY

Multiple plaintiffs brought a consolidated action to challenge the decision of a water district to avoid the preparation of an environmental impact report (EIR) by proceeding pursuant to the "emergency" provisions of the California Environmental Quality Act (CEQA) to drill and operate two "dewatering" wells in order to lower the water table and thereby lessen the risk of liquefaction in the event of a major earthquake. The trial court concluded that the water district's use of the emergency exemption was supported by substantial evidence and granted the district's motion to dissolve a preliminary injunction enjoining the drilling of the two wells.

The Court of Appeal issued a writ of mandate directing the court to vacate its order, and to enter an order denying the motion to dissolve the preliminary injunction. The court held that the appropriate standard for judicial review of an agency decision under CEQA to apply the emergency exception to the EIR requirement (Pub. Resources Code, §§ 21080, subd. (b)(4), 21060.3) was whether there existed substantial evidence in the record to support the agency finding of an emergency, and that a record which consisted largely of generalized assumptions regarding the incidence of earthquakes and their imminence and estimated the likelihood of such earthquakes to be between 1.4 and 5 percent per year did not amount to substantial evidence of an emergency. (Opinion by Campbell, P. J., with Kaufman, J., and Schaefer, J., FN* concurring.)

FN* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Pollution and Conservation Laws § 1--California Environmental Quality Act--Interpretation.
The California Environmental Quality Act is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.

(2a, 2b) Pollution and Conservation Laws § 1.4--California Environmental Quality Act--Exemption From Requirements of Act--Emergency Exemption.
The emergency exception to the EIR requirement under Pub. Resources Code, § 21080, subd. (b)(4) is extremely narrow, and the definition of "emergency" in § 21060.3 limits an emergency to an occurrence, not a condition, and demands that the occurrence be sudden and unexpected and involve a clear and imminent danger, demanding immediate action.
[See **Cal.Jur.3d,** Pollution and Conservation Laws, § 382.]
(3) Administrative Law § 10--Administrative Construction and Interpretation of Laws--Judicial Function.
An administrative agency charged with carrying out a particular statute must adopt some preliminary construction of the statute as a basis upon which to proceed and the administrative interpretation will

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be accorded great respect by the courts and will be followed if not clearly erroneous. But it is the duty of the court, when a question of law is properly presented, to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. The ultimate interpretation of a statute is an exercise of the judicial power.
[See **Am.Jur.2d**, Administrative Law, § 656.]
(4) Statutes § 38--Construction--Giving Effect to Statute--Construing Every Word.
The construction of a statute should give meaning to each word of the statute.

(5) Pollution and Conservation Laws § 1.4--California Environmental Quality Act--Exemption From Requirements of Act--Emergency Exemption--Environmental Impact.
The question of environmental impact is irrelevant to the emergency exemption to the environmental impact report (EIR) requirement provided in Pub. Resources Code, § 21080, subd. (b)(4). The text of the emergency exemption does not address the question of impact and the self-evident purpose of the exemption is to provide an escape from the EIR requirement despite a project's clear, significant impact.

(6) Pollution and Conservation Laws § 1.4--California Environmental Quality Act--Exemption From Requirements of Act--Emergency Exemption--Substantial Evidence Standard of Review.
When an agency seeks to avoid an environmental impact report (EIR) under Pub. Resources Code, § 21080, subd. (b)(4) (exempting from the EIR requirement specific actions necessary to prevent or mitigate an emergency) a reviewing court on petition for mandate must determine if there exists substantial evidence in the record to support the agency finding of an emergency. At a minimum, the administrative record must disclose substantial evidence of every element of the contended exemption as defined in Pub. Resources Code, § 21060.3 (which defines the term "emergency" for purposes of the California Environmental Quality Act).

(7) Pollution and Conservation Laws § 1.4--California Environmental Quality Act--Exemption From Requirements of Act--Emergency Exemption--Substantial Evidence.
The trial court committed reversible error in concluding that there was substantial evidence of an "emergency" to allow a water district to avoid the preparation of an environmental impact report by proceeding pursuant to the "emergency" provisions (Pub. Resources Code, § 21080, subd. (b)(4)) of the California Environmental Quality Act to drill and operate two "dewatering" wells in order to lower the water table and thereby lessen the risk of liquefaction in the event of a major earthquake, where evidence regarding the likelihood of an earthquake of a magnitude likely to cause liquefaction consisted largely of generalized assumptions regarding the incidence of earthquakes and their imminence and estimated the likelihood of such earthquakes to be between 1.4 and 5 percent per year. Such evidence, even in aggregation, did not amount to substantial evidence of an emergency.

COUNSEL

Best, Best & Krieger, Arthur L. Littleworth, Gregory K. Wilkinson, Ariel Pierre Calonne, John Woodhead, City Attorney, Clarice Turney, Assistant City Attorney, Richard A. Mulligan, Brunick, Pyle, Ludvigsen & Murray and Cynthia Ludvigsen for Petitioners. ***1107**

No appearance for Respondent.

McDonough, Holland & Allen, Martin McDonough, Stuart L. Somach, Virginia A. Cahill, Alan F. Ciamporcero, James W. Dilworth, Gresham, Varner, Savage, Nolan & Tilden, Bruce D. Varner and John Nolan for Real Party in Interest.

CAMPBELL, P.J.

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This case considers the propriety of a public agency's decision to proceed under an emergency exemption from an environmental impact report (EIR) required by the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.) FN1

FN1 All subsequent statutory references are to the Public Resources Code unless otherwise indicated.

By petition for writ of mandate petitioners Western Municipal Water District of Riverside County (Western), East Valley Water District (East Valley), the City of Riverside, and San Bernardino Valley Conservation District (Conservation District) in consolidated actions sought to challenge the decision of real party San Bernardino Valley Municipal Water District (real party or SBVMWD) to drill and operate two "dewatering" wells. The sole purpose of these wells would be to pump groundwater from the saturated pressure zone in the aquifer beneath the City of San Bernardino and then to discharge it into the Santa Ana River channel.

Respondent trial court granted a preliminary injunction enjoining the drilling of the two wells and subsequently heard an extended motion to dissolve the injunction. The central issue on the motion to dissolve was the propriety of SBVMWD's decision to avoid the preparation of an EIR by proceeding pursuant to the "emergency" provisions of CEQA. This determination in turn focused on the evidence presented to real party regarding the purported emergency, and of the sufficiency of that evidence to support real party's decision to invoke the "emergency" exemption. (§ 21080, subd. (b)(4), 21060.3, 21168.5.)

The trial court heard evidence from one witness on each side, and reviewed the record. The court held that real party's use of the emergency exemption was supported by substantial evidence. The court granted the motion to dissolve on March 31, 1986, whereupon Western and all other petitioners came to this court for review of the order by petition for writ of mandate. ***1108** We granted a stay of the trial court's order dissolving the preliminary injunction and issued an alternative writ. The petition for the peremptory writ is now before us for disposition.

Factual Background

"Liquefaction" occurs when water-saturated, cohesionless soils become compacted by the pressure of seismic waves transmitted through the soil during an earthquake. This compaction forces the water upward and creates a top layer of virtual quicksand into which overlying structures may topple. The water table underlying a 10,000 acre area in San Bernardino County has been rising to the extent that in the event of a major earthquake, liquefaction might occur. Concern for liquefaction in an area containing public facilities and about half the population of the City of San Bernardino motivated SBVMWD to authorize the two dewatering wells.

The Bunker Hill Basin, site of the rising water table, is an aquifer of approximately 120 square miles which lies beneath the San Bernardino Valley and is bounded by two active earthquake faults, the San Jacinto and the San Andreas. The basin contains porous, alluvial soils to a depth of 1,200 feet. Soil tests, undertaken from 1982 to 1985, have determined that these soils are particularly vulnerable to liquefaction if jarred and compressed during an earthquake. The magnitude of the potential danger from liquefaction rises when there is an increase in water saturation of the soil. There is no dispute that the groundwater was high in 1985 and 1986.

From 1982, when the United States Geological Survey (USGS) first suggested that a liquefaction potential existed and recommended soil testing, until 1985, when the USGS and real party's independent

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consultant indicated explicitly that liquefaction would occur in the event of a major earthquake, soil testing proceeded. Real party's board of directors discussed the liquefication threat intermittently since 1982. The record contains a memorandum to real party's general manager dated March 16, 1982, reporting on the conclusions of a seismologist and stating, "the single most useful thing for us to do would be to lower the water table in the pressure zone to 10-15 feet."

Although real party contends that a liquefaction emergency is impending, the only evidence of imminence in the administrative record was that in 1982, the California Division of Mines and Geology concluded that a catastrophic earthquake would take place along the southern San Andreas fault before the end of the century. In 1985, a Scientific American article stated that an earthquake of 8.3 on the Richter scale had a 2 to 5 percent annual ***1109** probability of occurring and that San Bernardino was *one of* the likeliest epicenters of such a quake.

In November of 1985, real party decided to take preventive action under CEQA's emergency exemption by drilling the two wells to dewater the aquifer. Real party concedes that it would take about six years using these two proposed wells to remove the 75,000 acre feet of water necessary to mitigate the perceived danger entirely. Nevertheless, according to real party, lowering the groundwater in any amount would significantly reduce the liquefaction threat.

Petitioners argue that real party's board did not consider alternatives to the two wells and ignored a warning from its consultant that significant adverse environmental effects of these wells needed to be studied. The parties hotly dispute this issue, but petitioners point to evidence showing that contaminated plumes of groundwater, which have already forced the closure of 11 wells in the basin, might be drawn into the domestic water supplies if the dewatering wells were drilled and operated. The trial court considered this pollution potential an "item [of] valid concern." Petitioners also argue that real party did not pursue threshold investigations of environmental impact. They stress that SBVMWD simply decided to proceed under the emergency exemption, thereby avoiding the CEQA requirement of an EIR. In so doing, real party disregarded the recommendation of its own consultant, who, on June 17, 1985, recommended that "a focused environmental impact report (EIR) be prepared to address only the significant issues and concerns listed ...." Real party filed a notice of exemption, one which the trial court termed "extremely sketchy." The notice explained real party's reason for exemption as: "This action is necessary to mitigate or prevent an emergency consisting of serious loss of life, property damage, and loss of essential public services occurring as a result of soil liquefaction in an earthquake."

The petitions in the superior court for writ of mandate followed, on which the court ultimately ruled that the record before real party did provide substantial evidence of a "pending crisis."

Discussion

Petitioners advance two contentions: (1) the evidence in the record, as a matter of law, cannot support a finding of "action needed to prevent an emergency," and (2) the trial court applied an improper standard of review.

In opposition, real party parenthetically asserts unclean hands and statute of limitations defenses against Western. However, such matters are not ***1110** properly before us in this proceeding, in that the trial court specifically ruled that Western's petition was not barred, and real party has not sought to challenge that ruling by way of its own writ. In addition, real party challenges the availability of mandate relief. On this point, it is enough to say that the

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absence of another adequate remedy and therefore the propriety of the petition were determined adversely to real party's position when the alternative writ was authorized. (*City of Los Angeles v. Superior Court* (1959) 51 Cal.2d 423, 429 [333 P.2d 745]; *Westminster Sch. Dist. v. Superior Court* (1972) 28 Cal.App.3d 120, 126 [104 Cal.Rptr. 388].)

I. *"Emergency" Exemption Under CEQA*

Petitioners argue that the trial court failed to construe the emergency exemption, and deferred instead to real party's erroneous interpretation of the exemption as applicable to predicted earthquakes.

Section 21080 in pertinent part provides: "(a) Except as otherwise provided in this division, this division [CEQA] shall apply to discretionary projects proposed to be carried out or approved by public agencies .... [¶] (b) This division shall not apply to the following: ... [¶] (4) Specific actions necessary to prevent or mitigate an emergency ...."

"Emergency" is defined by section 21060.3: "'Emergency' means a sudden, unexpected occurrence, *involving a clear and imminent danger, demanding immediate action* to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." (Italics added.)

(1)It is well established that CEQA is "to be interpreted ... to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761, 502 P.2d 1049]; accord, *People* ex rel. *Younger v. Local Agency Formation Com.* (1978) 81 Cal.App.3d 464, 476 [146 Cal.Rptr. 400].)

The trial court recognized this principle of construction for CEQA, stating that the issue of statutory construction encompassed "the crux of the conflict." We agree.

It is the courts of this state, not the parties, which have the obligation of interpreting statutes. (*Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935]; *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623, 629 [137 Cal.Rptr. 648].) As *1111 the Supreme Court stated in *Bodinson*: *supra.*, "We recognize ... that an administrative agency charged with carrying out a particular statute must adopt some preliminary construction of the statute as a basis upon which to proceed. It is likewise true that the administrative interpretation of a statute will be accorded great respect by the courts and will be followed if not clearly erroneous. [Citations.] But such a tentative administrative interpretation makes no pretense at finality and *it is the duty of this court, when such a question of law is properly presented, to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction.* [Citations.] The ultimate interpretation of a statute is an exercise of the judicial power. [Citations.]" (*Bodinson, supra.*, 17 Cal.2d at pp. 325-326, italics added.) In the context of CEQA, therefore, courts have defined the meaning of such terms as "project" and "on-going project," despite previous, conflicting administrative interpretations. (See *Friends of Mammoth, supra.*, 8 Cal.3d at p. 259; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 803-808 [108 Cal.Rptr. 377].)

(2a)The "emergency" exception of section 21080, subdivision (b)(4) is obviously extremely narrow. "Emergency" as defined by section 21060.3 is explicit and detailed. We particularly note that the definition limits an emergency to an "*occurrence*," not a condition, and that the occurrence must involve a "*clear and imminent danger, demanding*

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immediate action."

As one commentator has noted: "At least in principle, the emergency exemptions are appropriate, common sense provisions. The theory behind these exemptions is that if a project arises for which the lead agency simply *cannot* complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the EIR requirement is justifiable. For example, if a dam is ready to burst or a fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper." (Comment, *The Application of Emergency Exemptions Under CEQA: Loopholes in Need of Amendment?* (1984) 15 Pacific L.J. 1089, 1105, fn. omitted.)

Although SBVMWD urges that "CEQA, including its environmental impact report requirements, shall not apply to specific actions necessary to prevent or mitigate earthquakes or other soil or geological movements," this interpretation is unsupported by the text of the exemption. (4, 2b)Such a construction completely ignores the limiting ideas of "sudden," "unexpected," "clear," "imminent" and "demanding immediate action" expressly included by the Legislature and would be in derogation of the canon that a construction should give meaning to each word of the statute. (See ***1112***Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114 [172 Cal.Rptr. 194, 624 P.2d 244].) Moreover, in the name of "emergency" it would create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project, such as an extensive deforestation project or a new freeway, which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster. The result could hardly be intended by the careful drafting of the Legislature, and is unmistakably opposed to the policy of construing CEQA to afford the maximum possible protection of the environment. (See *Friends of Mammoth*, *supra.*, 8 Cal.3d at p. 259.)

II. *The Standard of Review*

Despite the trial court's construction of "emergency" in CEQA, the court nevertheless sanctioned real party's invocation of the emergency exemption of section 21080, subdivision (b)(4). The court ruled: "in spite of my conclusions ... I'm compelled to deny the Writs for the reasons stated: That it is not my prerogative nor do I wish the prerogative of second guessing [SBVMWD]." This ruling, therefore, confronts us with the question of the applicable standard of review.

Judicial review of an agency decision under CEQA is governed by sections 21168 and 21168.5 of that act. Section 21168.5 applies to decisions made *other than* as a result of "a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, ..." (§ 21168, see § 21168.5; see also *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, at p. 79, fn. 6 [118 Cal.Rptr. 34, 529 P.2d 66].) The court reviews the decision in a traditional mandamus action, a proceeding in which the court's inquiry is not limited to the administrative record, but in which it may receive additional evidence. FN2 Moreover, footnote 6 of *No Oil* also establishes that where "the trial court has received additional evidence [as in the case at bench], the question before it is whether substantial evidence on the whole record, including the evidence presented to it, supports the determination that no EIR was required." (*Merz v. Board of Supervisors* (1983) 147 Cal.App.3d 933, 937, fn. 2 [195 Cal.Rptr. 370], citing *No Oil*, *supra.*, 13 Cal.3d at p. 79, fn. 6.) ***1113**

FN2 Section 21168.5 provides: "In any action or proceeding, other than an action or proceeding under Section 21168, to attack,

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> review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."

In this case real party did not proceed by filing a negative declaration (§ 21080, subd. (c); see *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 186 [228 Cal.Rptr. 868]; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003 [165 Cal.Rptr. 514]), but by invoking a statutory exemption from the EIR requirement (§ 21080, subd. (b)(4)).

(5)The parties in this matter have focused on whether the evidence in the record supports a fair argument the project would have a significant environmental impact or whether there need be only substantial evidence of such an impact. However, the question of impact is irrelevant to the emergency exemption. In contrast to negative declarations (§ 21080, subd. (c)) and "categorical exemptions" (see, e.g., § 21080, subd. (b)(10), 21084), the text of the emergency exemption does not address the question of impact. Indeed, the self-evident purpose of the exemption is to provide an escape from the EIR requirement despite a project's clear, significant impact.

(6)The substantial evidence inquiry prescribed by section 21168.5 must therefore apply to the question of whether an emergency exists, not of the environmental impact of a remedial project. Stated differently, we conclude that where an agency seeks to avoid an EIR under section 21080, subdivision (b)(4), a reviewing court on petition for mandate must determine if there exists substantial evidence in the record to support the agency finding of an emergency.

We observe that the emergency exemption differs from the negative declaration procedure in that there is no statutory requirement of a preliminary study attending an agency decision to use the exemption. Nevertheless, it appears that the environmentally protective bias of CEQA consistent with *Friends of Mammoth* and *No Oil* can be met by a close judicial scrutiny of each element of the Legislature's detailed definition of "emergency."

At a minimum, the administrative record must disclose substantial evidence of every element of the contended exemption as defined in section 21060.3 and construed above. (7)However, our review discloses no substantial evidence that liquefaction is an *imminent* danger or that it demands immediate action. Indeed, although the court did not explicitly articulate a construction of the statute, it concluded, "if I were deciding from the record, I would say that [the record] does not support a finding of emergency." [FN3] We agree. ***1114**

> FN3 The trial court explained: "First of all, the high groundwater level problem has been with us since the beginning of time, I guess ... it runs in cycles. It isn't something that has happened very recently. The present cycle has been with us for five years, going on six. The soil has been of the same consistency for a number of years, so that's not anything that's relatively new on the scene. And the potential for severe seismic activity has been with us for quite awhile. Ever since the last big earthquake, I guess, they have been expecting the next one.
>
> "So these factors which existed upon what [real party] considered to be an emergency situation are something that have been with us for a long period of time, and the combination has been there for a long period of

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time.

"The only thing that is really changed is the amount of development that is going forward on the area of concern, and that's going forward apparently with some restrictions to compensate for the problem. But in any case, it is going forward. And that really is what the concern is about here, as I read the record.

"The attention of [real party] was brought to this set of conditions recently because of the severe earthquake in Mexico [in September 1985] and because of a lesser earthquake in the San Bernardino area. It was that set of circumstances, along with the evaluation of the potential damage because of extensive construction, if you will forgive me, [that] got [real party] excited.

"It is difficult for me to interpret this set of conditions or factors which have been with us for a long period of time as all of a sudden becoming an emergency ...."

The only pertinent data regarding imminence contained in the record are as follows. Exhibit 10 is a special publication of the California Department of Conservation, Division of Mines and Geology entitled "Earthquake Planning Scenario for a Magnitude 8.3 Earthquake on the San Andreas Fault in Southern California." That portion of the paper, the "purpose, approach, and design scenario" is curiously missing from the copy of the administrative record filed with this court, but SBVMWD's summary index in the record claims "Such an earthquake ... has a current annual probability of two to five percent, ..." Exhibit 11, is an article published in the February 1985 issue of Scientific American, entitled, *Predicting the Next Great Earthquake in California.* That article in part describes an "analysis [concluding] the likelihood of an earthquake of magnitude 8.3 along the southern San Andreas fault is estimated to be between 2 and 5 percent per year, or about 50 percent in the next 20 to 30 years."

At the only point in their briefs to this court that SBVMWD mentions "imminent danger," it cites only exhibits E and F. Exhibit F, "Evaluating Liquefaction Potential" is a 1985 paper of the USGS; in relevant portion it concludes that liquefaction is a potential threat in the San Bernardino-Riverside area. The generalities of its conclusions and the absence of conclusions regarding imminence are qualified, viz.: "These lower magnitude events are estimated to occur about as frequently as higher magnitude events on the San Andreas fault .... [W]e would expect shaking strong enough to induce liquefaction to occur several times [in the entire Los Angeles region] but at different sites in a 30-to-50-yr time span, perhaps once every 6 to 8 yr somewhere within the region."

Exhibit E was prepared in 1985 by independent consultants and is entitled, "Geotechnical and Seismic Hazards Report, San Bernardino Master Plan." *1115 As summarized by SBVMWD, the report "asses[es] the potential for liquefaction in downtown San Bernardino. The study concluded that liquefaction would occur in a large earthquake at many sites in San Bernardino." Our review of the report reveals only generalized assumptions regarding the incidence of earthquakes and their imminence. Conclusions regarding liquefaction in downtown San Bernardino included, for instance, "seismic shaking levels of less than 0.25g in general yield a low potential for liquefaction except possibly in localized areas of shallow groundwater and poor soil conditions." A generalized graph of seismic exposure for the downtown area (figure 11A) shows acceleration of 0.25g to range in likelihood from an average return period of 20 to about 125 years, with a "best estimate" of about 70 years. A 70-year return rate is mathematically equivalent to an annual likelihood of 1.4 percent. [FN4]

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FN4 We are also aware of the declaration of Herbert Wessel, which asserts, "In my opinion, the high groundwater levels currently pose an emergency situation related to the occurrence of flooding, earthquake or other related geologic movements ...." However, this opinion fails to speak in specific terms regarding the elements necessary for an emergency, discussed *ante*.

We hold that this evidence, even in aggregation, does not amount to substantial evidence of a "clear and imminent danger, demanding immediate action" as the exemption requires. The trial court's reluctant conclusion of substantial evidence of "emergency" as defined by CEQA was therefore error, and its order must be reversed.

DISPOSITION

For the foregoing reasons, we conclude that the court erred in its order of March 31, 1986, in dissolving the preliminary injunction, thereby permitting bids for construction of the wells. Let a peremptory writ of mandate issue directing the court to vacate its order, and to enter a new and different order denying the motion to dissolve the preliminary injunction, consistent with the views expressed herein.

The alternative writ is discharged.

Kaufman, J., and Schaefer, J., FN* concurred.

FN* Assigned by the Chairperson of the Judicial Council.

A petition for a rehearing was denied January 7, 1987, and the petition of real party in interest for review by the Supreme Court was denied March 4, 1987.

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Western Mun. Water Dist. v. Superior Court
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Supreme Court of California

WESTERN SECURITY BANK, N.A., Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

BEVERLY HILLS BUSINESS BANK et al., Real Parties in Interest. VISTA PLACE ASSOCIATES et al., Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; WESTERN SECURITY BANK, N.A., et al., Real Parties in Interest.

No. S037504.

Apr 7, 1997.

SUMMARY

After a partnership went into default on a loan it had obtained from a bank, the bank and the partnership modified the terms of the loan, and the general partners obtained unconditional, irrevocable standby letters of credit in favor of the bank as additional collateral. When the partnership again went into default, the bank foreclosed nonjudicially on the real property securing the loan and then presented the letters of credit to the issuer so as to cover the unpaid deficiency. The issuer brought an action for declaratory relief, seeking a declaration that it was not obligated to accept or honor the bank's tender of the letters of credit or, alternatively, a declaration that, if it was required to honor the letters, the partners were obligated to reimburse the issuer. The trial court entered a judgment decreeing that the issuer was required to honor the letters of credit and that the issuer was not barred from severally seeking reimbursement from the partners. (Superior Court of Los Angeles County, No. BC031239, Ernest George Williams, Judge.) The Court of Appeal, Second Dist., Div. Three, No. B066488, reversed, concluding that, under Code Civ. Proc., § 580d, part of the antideficiency law, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. Thereafter, the Legislature enacted urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5). After the Supreme Court granted review and returned the matter to the Court of Appeal for reconsideration in light of the urgency legislation, the Court of Appeal concluded the legislation constituted a substantial change in existing law and thus was prospective only and had no impact on the Court of Appeal's earlier conclusions regarding the parties' rights and obligations.

The Supreme Court reversed the judgment of the Court of Appeal and remanded. The court held that the Court of Appeal erred in concluding that the enactment of Sen. Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to

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remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case. (Opinion by Chin, J., with George, C. J., Baxter, and Brown, JJ., concurring. Concurring and dissenting opinion by Werdegar, J. Concurring and dissenting opinion by Mosk, J., with Kennard, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Letters of Credit § 10--Duties and Privileges of Issuer--Letters Presented to Cover Deficiency--Following Nonjudicial Foreclosure--Retroactivity of New Legislation.
In an action brought by the issuer of letters of credit against a bank that had loaned money to a partnership secured by real property, and against the partnership and its general partners, the Court of Appeal erred in concluding that the Legislature's postjudgment enactment of urgency legislation (Sen. Bill No. 1612), providing that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw (Code Civ. Proc., § 580.5), had no effect on a prior Court of Appeal holding in this case to the effect that, under Code Civ. Proc., § 580d, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, may decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's nonjudicial foreclosure on real property. The partners obtained the letters of credit as additional collateral for repayment of the loan and presented the letters for payment to the issuer after the bank foreclosed nonjudicially on the real property. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision to clarify the parties' obligations when letters of credit support loans also secured by real property. The Court of Appeal mistook standby letters of credit for an attempt to evade the antideficiency and foreclosure laws by seeing them only as a form of guaranty, and also overlooked that the parties specifically intended the standby letters of credit to be additional security. When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory prohibition of deficiency judgments. Further, the Legislature manifestly intended the respective obligations of the parties to a letter of credit transaction to remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Sen. Bill No. 1612. Since the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision, rather than a change in the law, the legislation had no impermissible retroactive consequences, and it governed this case.
[See 3 Witkin, Summary of Cal. Law (9th ed. 1987) Negotiable Instruments, § 11.]
(2) Statutes § 5--Operation and Effect--Retroactivity.
Statutes do not operate retrospectively unless the Legislature plainly intended them to do so. A statute has retrospective effect when it substantially changes the legal consequences of past events. A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. When the Legislature clearly intends a statute to operate retrospectively, the courts are obliged to carry out that intent unless due process considerations prevent them from doing so.

(3) Statutes § 5--Operation and Effect--Retroactivity--Amendments-- Purpose--Change in Law or Clarification.
A statute that merely clarifies, rather than changes,

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existing law does not operate retrospectively even if applied to transactions predating its enactment. The courts assume that the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. The courts' consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. Such a legislative act has no retrospective effect because the true meaning of the statute remains the same. One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation. An amendment that in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute. In such a case, the amendment may logically be regarded as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change. Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power that the Constitution assigns to the courts.

(4) Statutes § 5--Operation and Effect--Retroactivity--Legislative Intent-- Change in Law or Clarification.
A subsequent expression of the Legislature as to the intent of a prior statute, although not binding on the court, may properly be used in determining the effect of a prior act. Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a clarification, the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. Thus, where a statute provides that it clarifies or declares existing law, such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, the court must give effect to this intention unless there is some constitutional objection to it.

(5) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle.
The liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. Under the independence principle, a letter of credit is an independent obligation of the issuing bank rather than a form of guaranty or a surety obligation (Cal. U. Com. Code, § 5114, subd. (1)). Thus, the issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. Absent fraud, the issuer must pay upon proper presentment, regardless of any defenses the customer may have against the beneficiary based in the underlying transaction.

(6) Letters of Credit § 10--Duties and Privileges of Issuer--Independence Principle--Effect of Draw on Letter of Credit.
A standby letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. A creditor that draws on a letter of credit does no more than call on all of the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

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CHIN, J.

This case concerns the extent to which two disparate bodies of law interact when standby letters of credit are used as additional support for *237 loan obligations secured by real property. On one side we have California's complex web of foreclosure and antideficiency laws that circumscribe enforcement of obligations secured by interests in real property. On the other side is the letter of credit law's "independence principle," the unique characteristic of letters of credit essential to their commercial utility.

The antideficiency statute invoked in this case is Code of Civil Procedure section 580d. That section precludes a judgment for any loan balance left unpaid after the lender's nonjudicial foreclosure under a power of sale in a deed of trust or mortgage on real property. (See *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, 43-44 [27 Cal.Rptr. 873, 378 P.2d 97].) [FN1] The independence principle, in summary form, makes the letter of credit issuer's obligation to pay a draw conforming to the letter's terms completely separate from, and not contingent on, any underlying contract between the issuer's customer and the letter's beneficiary. (See, e.g., Cal. U. Com. Code, § 5114, subd. (1); *San Diego Gas & Electric Co. v. Bank Leumi* (1996) 42 Cal.App.4th 928, 933-934 [50 Cal.Rptr.2d 20].) [FN2]

FN1 In pertinent part, Code of Civil Procedure section 580d provides: "No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust."

FN2 In 1996, the Legislature completely revised division 5 of the California Uniform Commercial Code, which pertains to letters of credit. (Stats. 1996, ch. 176.) The enactment of chapter 176 repealed the former division 5 and added a new division 5. (Stats. 1996, ch. 176, §§ 6, 7.) The new provisions apply to letters of credit issued after the statute's effective date. (Stats. 1996, ch. 176, § 14.) Letters of credit issued earlier are to be dealt with as though the repeal had not occurred. (Stats. 1996,

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ch. 176, § 15.) We have no occasion in this case to consider the provisions of the new division 5.

The Legislature (Stats. 1996, ch. 497, § 7) later amended a statutory reference found in California Uniform Commercial Code section 5114 as it existed before chapter 176 was enacted. This second legislative action might appear to restore the prior section 5114 from the repealed former division 5 and possibly leave two sections numbered 5114 in the new division 5. (See Cal. Const., art. IV, § 9; Gov. Code, § 9605.) We have no occasion in this case to address the meaning or effect of this seeming incongruity either.

All references to section 5114 in this opinion are to California Uniform Commercial Code section 5114 as it existed before the 1996 legislation.

The Court of Appeal perceived a conflict between the public policies behind Code of Civil Procedure section 580d and the independence principle under the facts of this case. Here, after nonjudicial foreclosure of the real property security for its loan left a deficiency, the lender attempted to draw on the standby letters of credit of which it was the beneficiary. Ordinarily, the issuer's payment on a letter of credit would require the borrower to reimburse the issuer. (See § 5114, subd. (3).) The Court of Appeal considered that this result indirectly imposed on the borrower the equivalent of a *238 prohibited deficiency judgment. The court concluded the situation amounted to a "fraud in the transaction" under section 5114, subdivision (2)(b), one of the limited circumstances justifying an issuer's refusal to honor its letter of credit.

The Legislature soon acted to express a clear, contrary intent. It passed Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) as an urgency measure specifically meant to abrogate the Court of Appeal's holding. (Stats. 1994, ch. 611, §§ 5, 6.) In brief, the aspects of Senate Bill No. 1612 we address provided that an otherwise conforming draw on a letter of credit does not contravene the antideficiency laws and that those laws afford no basis for refusal to honor a draw. After the Legislature's action, we returned the case to the Court of Appeal for reconsideration in light of the statutory changes. On considering the point, the Court of Appeal concluded the Legislature's action was prospective only and had no impact on the court's earlier analysis of the parties' rights and obligations. Accordingly, the Court of Appeal reiterated its former conclusions.

We again granted review and now reverse. The Legislature's manifest intent was that Senate Bill No. 1612's provisions, with one exception not involved here, would apply to all existing loans secured by real property and supported by outstanding letters of credit. We conclude the Legislature's action constituted a clarification of the state of the law before the Court of Appeal's decision. The legislation therefore has no impermissible retroactive consequences, and we must give it the effect the Legislature intended.

I. Factual and Procedural Background

On October 10, 1984, Beverly Hills Savings and Loan Association, later known as Beverly Hills Business Bank (the Bank), loaned $3,250,000 to Vista Place Associates (Vista), a limited partnership, to finance the purchase of real property improved with a shopping center. Vista's general partners, Phillip F. Kennedy, Jr., John R. Bradley, and Peter M. Hillman (the Vista partners), each signed the promissory note. The loan transaction created a "purchase money mortgage," as it was secured by a "Deed of Trust and Assignment of Rents" as well as a letter of credit.

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Vista later experienced financial difficulties, and the loan went into default. Vista asked the Bank to modify the loan's terms so Vista could continue operating the shopping center and repay the debt. The Bank and Vista agreed to a loan modification in February 1987, under which the three Vista partners each obtained an unconditional, irrevocable standby letter of *239 credit in favor of the Bank in the amount of $125,000, for a total of $375,000. These were delivered to the Bank as additional collateral security for repayment of the loan. Under the modification agreement, the Bank was entitled to draw on the letters of credit if Vista defaulted or failed to pay the loan in full at maturity.

Western Security Bank, N.A. (Western) issued the letters of credit at the Vista partners' request. Each partner agreed to reimburse Western if it ever had to honor the letters. Under the agreement, each Vista partner gave Western a $125,000 promissory note. FN3

FN3 The parties' arrangements reflected a common use of letters of credit. A letter of credit typically is an engagement by a financial institution (the issuer), made at the request of a customer (also referred to as the applicant or account party) to pay a specified sum of money to another person (the beneficiary) upon compliance with the conditions for payment stated in the letter of credit, i. e., presentation of the documents specified in the letter of credit. (See Gregora, *Letters of Credit in Real Property Finance Transactions* (Spring 1991) 9 Cal. Real Prop. J. 1, 1-2.)

A letter of credit transaction involves at least three parties and three separate and independent relationships: (1) the relationship between the issuer and the beneficiary created by the letter of credit; (2) the relationship between the customer and the beneficiary created by a contract or promissory note, with the letter of credit securing the customer's obligations to the beneficiary under the contract or note; and (3) the relationship between the customer and the issuer created by a separate contract under which the issuer agrees to issue the letter of credit for a fee and the customer agrees to reimburse the issuer for any amounts paid out under the letter of credit. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 2; *San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at pp. 932-933; see *Voest-Alpine Intern. Corp. v. Chase Manhattan Bank* (2d Cir. 1983) 707 F.2d 680, 682; and *Colorado Nat. Bank, etc. v. Bd. of County Com'rs* (Colo. 1981) 634 P.2d 32, 36-38, for a discussion of the history and structure of letter of credit transactions.)

Letters of credit can function as payment mechanisms. For example, in sales transactions a letter of credit assures the seller of payment when parting with goods, while the conditions for payment specified in the letter of credit (often a third party's documentation, such as a bill of lading) assure the buyer the goods have been shipped before payment is made. (Gregora, *Letters of Credit in Real Property Finance Transactions*, *supra*, 9 Cal. Real Prop. J. at p. 3.) In the letter of credit's role as a payment mechanism, a payment demand occurs in the ordinary course of business and is consistent with full performance of the underlying obligations. (*Ibid.*)

The use of letters of credit has now expanded beyond that function, and they are employed in many other types of transactions in which one party requires assurances the other party will perform. (Gregora, *Letters of Credit in Real Property Finance Trans-*

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> *actions, supra*, 9 Cal. Real Prop. J. at p. 3.) When used to support a debtor's obligations under a promissory note or other debt instrument, the so-called "standby" letter of credit typically provides that the issuer will pay the creditor when the creditor gives the issuer written certification that the debtor has failed to pay the amount due under the debtor's underlying obligation to the creditor. (*Ibid.*) Thus, a payment demand under a standby letter of credit indicates that there is a problem-either the customer is in financial difficulty, or the beneficiary and the customer are in a dispute. (*Ibid.*)

In December 1990, the Bank declared Vista in default on the modified loan. The Bank recorded a notice of default on February 13, 1991, and began ***240** nonjudicial foreclosure proceedings. (Civ. Code, § 2924.) It then filed an action against Vista seeking specific performance of the rents and profits provisions in the trust deed and appointment of a receiver.

On June 11, 1991, attorneys for the Bank and Vista signed a letter agreement settling the Bank's lawsuit. In that agreement, Vista promised it would "not take any legal action to prevent [the Bank's] drawing upon [the letters of credit] after the Trustee's Sale of the Vista Place Shopping Center, ... provided that the amount of the draw by [the Bank] does not exceed an amount equal to the difference between [Vista's] indebtedness and the successful bid of the Trustee's Sale." Vista promised as well not to take any draw-related legal action against the Bank after the Bank's draw on the letters of credit.

On June 13, 1991, the Bank concluded its nonjudicial foreclosure on the shopping center under the power of sale in its deed of trust. The Bank was the only bidder, and it purchased the property. The sale left an unpaid deficiency of $505,890.16.

That same day, the Bank delivered the three letters of credit and drafts to Western and demanded payment of their full amount, $375,000. The Bank never sought to recover the $505,890.16 deficiency from Vista or the Vista partners. About the time that Western received the Bank's draw demand, it also received a written notice from the Vista partners' attorney. The notice asserted that Code of Civil Procedure section 580d barred Western from seeking reimbursement from the Vista partners for any payment on the letters of credit, and that if Western paid, it did so at its own risk.

Western did not honor the Bank's demand for payment on the letters of credit. Instead, on June 24, 1991, Western filed this declaratory relief action against the Bank, as well as Vista and the Vista partners (collectively, the Vista defendants). Western's complaint sought: (1) a declaration that Western is not obligated to accept or honor the Bank's tender of the letters of credit; or, alternatively, (2) a declaration that, if Western must pay on the letters of credit, the Vista partners must reimburse Western according to the terms of their promissory notes.

The Vista defendants cross-complained against Western for cancellation of their promissory notes and for injunctive relief. In July 1991, the Bank filed a first amended cross-complaint, alleging Western wrongfully dishonored the letters of credit, and the Vista defendants breached the agreement not to take legal action to prevent the Bank's drawing on the letters of credit.

The Bank, Western, and the Vista defendants each sought summary judgment. After several hearings and discussions with counsel, which produced a stipulation on the key facts, the court issued its decision on January ***241** 23, 1992. By its minute order of that date, the court (l) denied the three motions for summary judgment, (2) severed the Vista defendants' cross-complaint against Western for cancellation of the promissory notes, (3) severed

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the Bank's amended cross-complaint against the Vista defendants for breach of the letter agreement, and (4) issued a tentative decision on the trial of Western's complaint for declaratory relief and the Bank's amended cross-complaint against Western for wrongful dishonor of the letters of credit.

The trial court signed and filed the judgment on March 26, 1992. The court decreed the Bank was entitled to recover $375,000 from Western, plus interest at 10 percent from June 13, 1991, the date of the Bank's demand, and costs of suit. The court further decreed Western could seek reimbursement from the Vista partners severally, and each Vista partner was obligated to reimburse Western, pursuant to the promissory notes in favor of Western, for its payment to the Bank. Western appealed, and the Vista defendants cross-appealed.

The Court of Appeal, after granting rehearing and accepting briefing by several amici curiae, issued an opinion reversing the trial court on December 21, 1993. In that opinion, the court concluded: "We hold that, under section 580d of the Code of Civil Procedure, an integral part of California's long-established antideficiency legislation, the issuer of a standby letter of credit, provided to a real property lender by a debtor as additional security, *may* decline to honor it after receiving notice that it is to be used to discharge a deficiency following the beneficiary-lender's *nonjudicial* foreclosure on real property. Such a use of standby letters of credit constitutes a 'defect not apparent on the face of the documents' within the meaning of California Uniform Commercial Code section 5114, subdivision (2)(b), and therefore such permissive dishonor does no offense to the 'independence principle.' " (Original italics, fn. omitted.)

In that first opinion, the Court of Appeal also solicited the Legislature's attention: "To the extent that this result will present problems for real estate lenders with respect to the way they now do business (as the Bank and several amici curiae have strongly suggested), it is a matter which should be addressed to the Legislature. We have been presented with two important but conflicting statutory policies. Our reconciliation of them in this case may not prove as satisfactory in another factual context. It is therefore a matter which should receive early legislative attention." (Fn. omitted.)

We granted review, and while the matter was pending, the Legislature passed Senate Bill No. 1612, an urgency statute that the Governor signed on *242 September 15, 1994. Senate Bill No. 1612 affected four statutes. Section 1 of the bill amended Civil Code section 2787 to state that a letter of credit is not a form of suretyship obligation. (Stats. 1994, ch. 611, § 1.) Section 2 of the bill added Code of Civil Procedure section 580.5, explicitly excluding letters of credit from the purview of the antideficiency laws. (Stats. 1994, ch. 611, § 2.) Section 3 of the bill added Code of Civil Procedure section 580.7, which declares unenforceable letters of credit issued to avoid defaults on purchase money mortgages for owner-occupied real property containing one to four residential units. (Stats. 1994, ch. 611, § 3.) Section 4 of the bill made "technical, nonsubstantive changes" to section 5114. (Stats. 1994, ch. 611, § 4; Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

The Legislature made its purpose explicit: "It is the intent of the Legislature in enacting Sections 2 and 4 of this act to confirm the independent nature of the letter of credit engagement and to abrogate the holding [of the Court of Appeal in this case] .... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.) The same purpose was echoed in the bill's statement of the facts calling for an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by

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real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.)

After the Legislature enacted Senate Bill No. 1612, we requested the parties' views on its effect. On February 2, 1995, after considering the parties' responses, we transferred the case to the Court of Appeal with directions to vacate its decision and reconsider the cause in light of the Legislature's action.

On reconsideration, the Court of Appeal determined Senate Bill No. 1612 constituted a substantial change in existing law. Believing there was no clear evidence that the Legislature intended the statute to operate retrospectively, the Court of Appeal thought Senate Bill No. 1612 had only prospective application. Therefore, Senate Bill No. 1612 did not affect the Court of Appeal's prior conclusions on the parties' rights and obligations. The Court of Appeal filed its second opinion on September 29, 1995, mostly repeating its prior reasoning and conclusions. We granted the Bank's petition for review.

II. Discussion

(1a) As the Court of Appeal recognized, we first must determine the effect on this case of the Legislature's enactment of Senate Bill No. 1612. *243 (2) A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207-1208 [246 Cal.Rptr. 629, 753 P.2d 585]; *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 393 [182 P.2d 159].) A statute has retrospective effect when it substantially changes the legal consequences of past events. (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 7 [255 Cal.Rptr. 412, 767 P.2d 679].) A statute does not operate retrospectively simply because its application depends on facts or conditions existing before its enactment. (*Ibid.*) Of course, when the Legislature clearly intends a statute to operate retrospectively, we are obliged to carry out that intent unless due process considerations prevent us. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587, 592 [128 Cal.Rptr. 427, 546 P.2d 1371].)

(3) A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. (Cf. *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568 [20 Cal.Rptr.2d 341, 853 P.2d 507].) Our consideration of the surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484 [116 P.2d 71]; *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833 [2 Cal.Rptr.2d 441]; see *Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 828, fn. 8 [114 Cal.Rptr. 589, 523 P.2d 629].) Such a legislative act has no retrospective effect because the true meaning of the statute remains the same. (*Stockton Sav. & Loan Bank v. Massanet* (1941) 18 Cal.2d 200, 204 [114 P.2d 592]; *In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1440 [28 Cal.Rptr.2d 726]; *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 976-977 [185 Cal.Rptr. 49].)

One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation: " 'An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute.... [¶] If the amendment was enacted soon

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after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act-a formal change-rebutting the presumption of substantial change.' (1A Singer, Sutherland Statutory Construction (5th ed. 1993) § 22.31, p. *244 279, fns. omitted.)" (*RN Review for Nurses, Inc. v. State of California* (1994) 23 Cal.App.4th 120, 125 [28 Cal.Rptr.2d 354].) FN4

FN4 The " 'presumption of substantial change' " mentioned in the quoted passage refers to the presumption that amendatory legislation accomplishing substantial change is intended to have only prospective effect. Some courts have thought changes categorized as merely formal or procedural present no problem of retrospective operation. However, as mentioned above, California has rejected this type of classification: "In truth, the distinction relates not so much to the form of the statute as to its effects. If substantial changes are made, even in a statute which might ordinarily be classified as procedural, the operation on existing rights would be retroactive because the legal effects of past events would be changed, and the statute will be construed to operate only in futuro unless the legislative intent to the contrary clearly appears." (*Aetna Cas. & Surety Co. v. Ind. Acc. Com.*, *supra*, 30 Cal.2d at p. 394; cf. *Kizer v. Hanna*, *supra*, 48 Cal.3d at pp. 7-8.)

Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts. (*California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935]; see *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582].) Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies. (Cf. *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 51-52 [276 Cal.Rptr. 114, 801 P.2d 357].) Nevertheless, the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them.

(4) "[A] subsequent expression of the Legislature as to the intent of the prior statute, although not binding on the court, may properly be used in determining the effect of a prior act." (*California Emp. etc. Com. v. Payne*, *supra*, 31 Cal.2d at pp. 213-214.) Moreover, even if the court does not accept the Legislature's assurance that an unmistakable change in the law is merely a "clarification," the declaration of intent may still effectively reflect the Legislature's purpose to achieve a retrospective change. (*Id.* at p. 214.) Whether a statute should apply retrospectively or only prospectively is, in the first instance, a policy question for the legislative body enacting the statute. (*Evangelatos v. Superior Court*, *supra*, 44 Cal.3d at p. 1206.) Thus, where a statute provides that it clarifies or declares existing law, "[i]t is obvious that such a provision is indicative of a legislative intent that the amendment apply to all existing causes of action from the date of its enactment. In accordance with the general rules of statutory construction, we must give effect to this intention unless there is some constitutional objection thereto." (*245*California Emp. etc. Com. v. Payne*, *supra*, 31 Cal.2d at p. 214; cf. *City of Sacramento v. Public Employees' Retirement System* (1994) 22 Cal.App.4th 786, 798 [27 Cal.Rptr.2d 545]; *City of Redlands v. Sorensen* (1985) 176 Cal.App.3d 202, 211 [221 Cal.Rptr. 728].)

With respect to Senate Bill No. 1612, the Legislature made its intent plain. Section 5 of the bill states, in part: "It is the intent of the Legislature in

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enacting Sections 2 and 4 of this act [FN5] to confirm the independent nature of the letter of credit engagement and to abrogate the holding in [the Court of Appeal's earlier opinion in this case], that presentment of a draft under a letter of credit issued in connection with a real property secured loan following foreclosure violates Section 580d of the Code of Civil Procedure and constitutes a 'fraud ... or other defect not apparent on the face of the documents' under paragraph (b) of subdivision (2) of Section 5114 of the Commercial Code.... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either." (Stats. 1994, ch. 611, § 5.)

> FN5 Section 2 of Senate Bill No. 1612 added Code of Civil Procedure section 580.5, which provides in pertinent part: "(b) With respect to an obligation which is secured by a mortgage or a deed of trust upon real property or an estate for years therein and which is also supported by a letter of credit, neither the presentment, receipt of payment, or enforcement of a draft or demand for payment under the letter of credit by the beneficiary of the letter of credit nor the honor or payment of, or the demand for reimbursement, receipt of reimbursement or enforcement of any contractual, statutory or other reimbursement obligation relating to, the letter of credit by the issuer of the letter of credit shall, whether done before or after the judicial or nonjudicial foreclosure of the mortgage or deed of trust or conveyance in lieu thereof, constitute any of the following: [¶] (1) An action within the meaning of subdivision (a) of Section 726, or a failure to comply with any other statutory or judicial requirement to proceed first against security. [¶] (2) A money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726, or the functional equivalent of any such judgment. [¶] (3) A violation of Section 580a, 580b, 580d, or 726." (Code Civ. Proc., § 580.5, subd. (b), as added by Stats. 1994, ch. 611, § 2.)
>
> Section 4 of Senate Bill No. 1612 made certain technical, nonsubstantive changes to section 5114, which embodies the independence principle applicable to letter of credit payment obligations. (§ 5114, as amended by Stats. 1994, ch. 611, § 4.)

The Legislature's intent also was evident in its statement of the facts justifying enactment of Senate Bill No. 1612 as an urgency statute: "In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately." (Stats. 1994, ch. 611, § 6.) The Legislature's unmistakable focus was the disruptive effect of the Court of Appeal's decision on the expectations of parties to transactions where a letter of credit was issued in connection with a loan secured by real property. By abrogating the Court of Appeal's decision, the ***246** Legislature intended to protect those parties' expectations and restore certainty and stability to those transactions. If the Legislature acts promptly to correct a perceived problem with a judicial construction of a statute, the courts generally give the Legislature's action its intended effect. (See, e.g., *Escalante v. City of Hermosa Beach* (1987) 195 Cal.App.3d 1009, 1020 [241 Cal.Rptr. 199]; *City of Redlands v. Sorensen*, *supra*, 176 Cal.App.3d at pp. 211-212; *Tyler v. State of California*, *supra*, 134 Cal.App.3d at pp. 976-977; but see *Del Costello v. State of California*, *supra*, 135 Cal.App.3d at p. 893, fn. 8 [courts need not accept Legislature's interpretation of statute].)

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The plain import of Senate Bill No. 1612 is that the Legislature intended its provisions to apply immediately to existing loan transactions secured by real property and supported by outstanding letters of credit, including those in this case.

We next consider whether Senate Bill No. 1612 effected a change in the law, or instead represented a clarification of the state of the law before the Court of Appeal's decision. As mentioned earlier, Senate Bill No. 1612 amended two code sections (§ 5114; Civ. Code, § 2787) and added two sections to the Code of Civil Procedure (§§ 580.5, 580.7). The two code sections Senate Bill No. 1612 amended plainly made no substantive change in the law. The amendments to section 5114, which concerns the issuer's duty to honor a draft conforming to the letter of credit's terms, were "technical, nonsubstantive changes," as the Legislative Counsel's Digest correctly noted. (See Legis. Counsel's Dig., Sen. Bill No. 1612 (1993-1994 Reg. Sess.).)

In the other section amended, Civil Code section 2787, Senate Bill No. 1612 added a statement reflecting an established formal distinction: "A letter of credit is not a form of suretyship obligation." (Stats. 1994, ch. 611, § 1.) Civil Code section 2787 defines a surety or guarantor as "one who promises to answer for the debt, default, or miscarriage of another, or hypothecates property as security therefor." Generally, a surety's liability for an obligation is secondary to, and derivative of, the liability of the principal for that obligation. (See, e.g., Civ. Code, § 2806 et seq.)

(5) By contrast, the liability of the issuer of a letter of credit to the letter's beneficiary is direct and independent of the underlying transaction between the beneficiary and the issuer's customer. (See *San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at pp. 933-934; *Paramount Export Co. v. Asia Trust Bank, Ltd.* (1987) 193 Cal.App.3d 1474, 1480 [238 Cal.Rptr. 920]; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank* (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69].) Thus, as the amendment to Civil Code section 2787 made clear, existing law viewed a *247 letter of credit as an independent obligation of the issuing bank rather than as a form of guaranty or a surety obligation. (See, e.g., Dolan, The Law of Letters of Credit: Commercial and Standby Credits (rev. ed. 1996) § 2.10[1], pp. 2-61 to 2-63 (Dolan, Letters of Credit); 3 White & Summers, Uniform Commercial Code (4th ed. 1995) Letters of Credit, § 26-2, pp. 112-117.) The issuer of a letter of credit cannot refuse to pay based on extraneous defenses that might have been available to its customer. (*San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at p. 934.) Absent fraud, the issuer must pay upon proper presentment regardless of any defenses the customer may have against the beneficiary based in the underlying transaction. (*Ibid.*)

Senate Bill No. 1612's remaining statutory addition with which we are concerned, FN6 Code of Civil Procedure section 580.5, specified that letter of credit transactions do not violate the antideficiency laws contained in Code of Civil Procedure sections 580a, 580b, 580d, or 726. (Code Civ. Proc., § 580.5, subd. (b)(3).) In particular, the new section specifies that a lender's resort to a letter of credit, and the issuer's concomitant right to reimbursement, do not constitute an "action" under Code of Civil Procedure section 726, or a failure to proceed first against security, regardless of whether they come before or after a foreclosure. (Code Civ. Proc., § 580.5, subd. (b)(1).) Similarly, letter of credit draws and reimbursements do not constitute deficiency judgments "or the functional equivalent of any such judgment." (Code Civ. Proc., § 580.5, subd. (b)(2).)

FN6 We do not address the effect of section 3 of Senate Bill No. 1612, which added section 580.7 to the Code of Civil Procedure. This section provides, in pertinent part: "(b) No letter of credit shall be enforceable by any party thereto in a loan

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> transaction in which all of the following circumstances exist: [¶] (1) The customer is a natural person. [¶] (2) The letter of credit is issued to the beneficiary to avoid a default of the existing loan. [¶] (3) The existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer. [¶] (4) *The letter of credit is issued after the effective date of this section.*" (Code Civ. Proc., § 580.7, subd. (b), italics added, as added by Stats. 1994, ch. 611, § 3.) The italicized language, not found in the other statutory changes made by Senate Bill No. 1612, suggests the Legislature intended section 580.7 to have prospective effect only. However, this case does not involve any interpretation of this section or its effect, and so we express no view on those matters.

The Court of Appeal saw Code of Civil Procedure section 580.5 as a change in the law, in large part, because of the analogy it employed to examine the use of standby letters of credit as additional support for loans also secured by real property. The Bank argued a standby letter of credit was the functional equivalent of cash collateral. The Court of Appeal disagreed, instead analogizing standby letters of credit to guaranties and emphasizing the similarities of purpose and function: "No matter how it may be regarded ***248** by the beneficiary, a standby letter is certainly not cash or its equivalent from the perspective of the debtor; in reality, it represents his promise to provide *additional funds* in the event of his *future* default or deficiency, thus confirming its use not as a means of payment but rather as an instrument of guarantee." (Original italics.) The Court of Appeal relied on *Union Bank v. Gradsky* (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (*Gradsky*) and *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (*Commonwealth Mortgage*).

Gradsky held that a creditor, after nonjudicial foreclosure of the real property security for a note, could not recover the note's unpaid balance from a guarantor. (*Gradsky*, *supra*, 265 Cal.App.2d at p. 41.) Significantly, the court did not find Code of Civil Procedure section 580d's prohibition of deficiency judgments barred the creditor's claim on the guarantor: "It is barred by applying the principles of estoppel. The estoppel is raised as a matter of law to prevent the creditor from recovering from the guarantor after the creditor has exercised an election of remedies which destroys the guarantor's subrogation rights against the principal debtor." (*Gradsky*, *supra*, 265 Cal.App.2d at p. 41.)

The court noted that the guarantor, after payment, ordinarily would be equitably subrogated to the rights and security formerly held by the creditor. (*Gradsky*, *supra*, 265 Cal.App.2d at pp. 44-45; cf. Civ. Code, §§ 2848, 2849.) However, where the creditor first resorts to nonjudicial foreclosure, the guarantor could not acquire any subrogation rights from the creditor because under Code of Civil Procedure section 580d, the nonjudicial sale eliminated both the security and the possibility of a deficiency judgment against the debtor. (*Gradsky*, *supra*, 265 Cal.App.2d at p. 45.) Because the creditor has a duty not to impair the guarantor's remedies against the debtor, the court held the creditor is estopped from pursuing the guarantor after electing a remedy-nonjudicial foreclosure-that eliminated the security for the debt and curtailed the possibility of the guarantor's reimbursement from the debtor. (*Id.* at pp. 46-47.)

However, the rules applicable to surety relationships do not govern the relationships between the parties to a letter of credit transaction. (See Dolan, Letters of Credit, *supra*, § 2.10[1], pp. 2-62 to

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2-63.) At the time of this case's transactions, a majority of courts did not grant subrogation rights to an issuer that honored a draw on a credit; the issuer satisfied its own primary obligation, not the debt of another. (*Tudor Dev. Group, Inc. v. U.S. Fid. & Guar. Co.* (3d Cir. 1992) 968 F.2d 357, 361-363; see 3 White & Summers, Uniform Commercial Code, *supra*, Letters of Credit, § 26-15, pp. 211-212; but see Cal. U. Com. Code, § 5117; fn. 2, *ante*, at pp. 237-238.) Nor does the ***249** beneficiary of a credit owe any obligations to the issuer; literal compliance with the letter of credit's terms for payment is all that is required. (Cf. *Paramount Export Co. v. Asia Trust Bank, Ltd.*, *supra*, 193 Cal.App.3d at p. 1480; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank*, *supra*, 86 Cal.App.3d at p. 178.)

Gradsky contains additional language suggesting a much broader rule than its holding and analysis warranted. Going beyond the subrogation theory underlying its holding, the court observed: "If ... the guarantor ... can successfully assert an action in assumpsit against [the debtor] for reimbursement, the obvious result is to permit the recovery of a 'deficiency' judgment against the debtor following a nonjudicial sale of the security under a different label. It makes no difference to [the debtor's] purse whether the recovery is by the original creditor in a direct action following nonjudicial sale of the security, or whether the recovery is in an action by the guarantor for reimbursement of the same sum." (*Gradsky*, *supra*, 265 Cal.App.2d at pp. 45-46.) The court also said: "The Legislature clearly intended to protect the debtor from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the debtor following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.) In view of the reasoning of the court's holding, these additional observations were unnecessary to the case's determination.

Commonwealth Mortgage followed *Gradsky* to hold a mortgage guaranty insurer could not enforce indemnity agreements to obtain reimbursement from the debtors for the insurer's payment to the lender after the lender's nonjudicial sale of its real property security. (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 517.) The court said the mortgage guaranty insurance policy served the same purpose as the guaranty in *Gradsky*, and thus *Gradsky* would bar the insurer from being reimbursed under subrogation principles. (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 517.) The court found the substitution of indemnity agreements for subrogation rights did not distinguish the case from *Gradsky*. Relying on the rule that a principal obligor incurs no additional liability on a note by also being a guarantor of it, the court said the agreements added nothing to the debtors' existing liability. (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 517.) Thus, the court said the indemnity agreements could not be viewed as independent obligations. (*Ibid.*) Instead, the court concluded they were invalid attempts to have the debtors waive in advance the statutory prohibition against deficiency judgments. (*Ibid.*)

As did *Gradsky*, *Commonwealth Mortgage* also inveighed against subterfuges that thwart the purposes of Code of Civil Procedure section 580d. ***250** (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at pp. 515, 517.) "Although section 580d applies by its specific terms only to actions for 'any deficiency upon a note secured by a deed of trust' and not to actions based upon other obligations, the proscriptions of section 580d cannot be avoided through artifice [citation] .... In determining whether a particular recovery is precluded, we must consider whether the policy behind section 580d would be violated by such a recovery. [Citation.]" (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 515.) Thus, as did the *Gradsky* court, the *Commonwealth Mortgage* court augmen-

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ted its opinion with concepts unnecessary to its determination of the case. FN7

> FN7 The precedential value of such statements in *Commonwealth Mortgage* also is clouded by a factual enigma the court left unresolved. As the Court of Appeal recognized, the lender in that case purchased the real property security at the trustee's sale for a full credit bid, which ought to have satisfied the debt. (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 512, fn. 3.) Despite the apparent absence of any deficiency, the court deemed it unnecessary to decide whether a deficiency in fact remained before discussing the effect of Code of Civil Procedure section 580d's prohibition of deficiency judgments. (*Commonwealth Mortgage*, *supra*, 211 Cal.App.3d at p. 515.)

The Court of Appeal in this case extrapolated from the *Gradsky* and *Commonwealth Mortgage* precedents a rule that swept far beyond their origins in guaranty and suretyship relationships: "Not only is a *creditor* prevented from obtaining a deficiency judgment against the debtor, but no other person is permitted to obtain what would, in effect, amount to a deficiency judgment." (Original italics.) The Court of Appeal apparently concluded a transaction has such an effect if it "has the practical consequence of requiring the debtor to pay *additional money* on the debt *after* default or foreclosure." (Original italics.) "Thus, we preserve the principle, clearly established by *Gradsky* and *Commonwealth* [*Mortgage*], that a lender should not be able to utilize a device of any kind to avoid the limitations of section 580d; and we apply that principle here to standby letters of credit." However, as we have seen, neither *Gradsky* nor *Commonwealth Mortgage* established such a principle as a rule of law. Instead, their statements accentuated the courts' vigilance regarding attempted evasions of the antideficiency and foreclosure laws.

(1b) The Court of Appeal mistook standby letters of credit for such an attempt by seeing them only as a form of guaranty. The court analogized the standby letter of credit to a guaranty because of the perceived functional similarities. One consequence of that analogy was that the court applied to standby letters of credit a rule whose legal justifications originated in the subrogation rights owed to sureties. However, as discussed before, letters of credit-standby or otherwise-are not a form of suretyship, and the rights of the parties to these transactions are not governed by suretyship principles. ***251** Further, suretyship involves no counterpart to the independence principle essential to letters of credit.

While analogies can improve our understanding of how and why letters of credit are useful, analogies cannot substitute for recognizing the letters' unique qualities. The authors of one leading treatise aptly summarized the point: "In short, a letter of credit is a letter of credit. As Bishop Butler once said, 'Everything is what it is and not another thing.' " (3 White & Summers, Uniform Commercial Code, *supra*, Letters of Credit, § 26-2, p. 117, fn. omitted.)

By focusing on analogies to guaranties, the Court of Appeal also overlooked that the parties in this case specifically intended the standby letters of credit to be additional security. FN8 The parties' stipulated facts include that the original loan agreement was secured by a letter of credit, and that "Vista caused [the subsequent letters of credit] to be issued by Western as additional collateral security ...." The Court of Appeal found the letters of credit were not security interests in personal property under California Uniform Commercial Code section 9501, subdivision (4), as the Bank had argued. However, we need not determine whether a standby letter of credit comes within the scope of division 9 of the California Uniform Commercial Code. A letter of credit is sui generis as a means of securing or supporting performance of an obligation incurred in a separate transaction. Regardless of whether this

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idiosyncratic undertaking meets the qualifications for a security interest under the California Uniform Commercial Code, it nevertheless is a form of security for assuring another's performance.

> FN8 To the extent that resort to analogy is appropriate for such a singular legal creation as the standby letter of credit, its closest relative would seem to be cash collateral. As one commentator noted: "In view of the relative positions of the beneficiary, the [customer], and the issuing bank, the standby letter of credit is more analogous to a cash deposit left with the beneficiary than it is to the traditional letter of credit or to the performance bond. Because the beneficiary generates all the documents necessary to obtain payment, he has the power to appropriate the funds represented by the standby letter of credit at any time.... [¶] Even though the standby letter of credit is functionally equivalent to a cash deposit, it differs from a cash deposit because the customer does not have to part with its own funds until payment is made and it is forced to reimburse the issuing bank. Because the cash-flow burden might otherwise be prohibitive, this is a great advantage to a party who enters into a large number of transactions simultaneously. Moreover, the beneficiary is satisfied; while it does not actually possess the funds, as it would if a cash deposit were used, it is protected by the credit of a financial institution." (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218, 225-226, fns. omitted; see Dolan, Letters of Credit, *supra*, § 1.06, pp. 1-24 to 1-25, for a discussion of cases illustrating use of standby credits in lieu of cash, bonds, and other security.)

When viewed as additional security for a note also secured by real property, a standby letter of credit does not conflict with the statutory ***252** prohibition of deficiency judgments. Code of Civil Procedure section 580d does not limit the security for notes given for the purchase of real property only to trust deeds; other security may be given as well. (*Freedland v. Greco* (1955) 45 Cal.2d 462, 466 [289 P.2d 463].) Creditors may resort to such other security in addition to nonjudicial foreclosure of the real property security. (*Ibid.*; *Hatch v. Security-First Nat. Bank* (1942) 19 Cal.2d 254, 260 [120 P.2d 869].) (6) A standby letter of credit is a security device created at the request of the customer/debtor that is an obligation owed independently by the issuing bank to the beneficiary/creditor. (See *San Diego Gas & Electric Co. v. Bank Leumi*, *supra*, 42 Cal.App.4th at pp. 933-934; *Lumbermans Acceptance Co. v. Security Pacific Nat. Bank*, *supra*, 86 Cal.App.3d at p. 178.) A creditor that draws on a letter of credit does no more than call on all the security pledged for the debt. When it does so, it does not violate the prohibition of deficiency judgments.

(1c) The Legislature plainly intended that the sections of Senate Bill No. 1612 we have addressed would apply to existing loan transactions supported by outstanding letters of credit. We conclude the Legislature's action did not effect a change in the law. Before the Legislature passed Senate Bill No. 1612, an issuer could not refuse to honor a conforming draw on a standby letter of credit-given as additional security for a real property loan-on the basis that the draw followed a nonjudicial sale of the real property security. The Court of Appeal created such a basis, but produced an unprecedented rule without solid legal underpinnings or any real connection to the actual language of the statutes involved.

Therefore, the aspects of Senate Bill No. 1612 we have discussed did not effect any change in the law, but simply clarified and confirmed the state of the law prior to the Court of Appeal's first opinion. Because the legislative action did not change the legal

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effect of past actions, Senate Bill No. 1612 does not act retrospectively; it governs this case. The Legislature concluded that Senate Bill No. 1612 should be given immediate effect to confirm and clarify the law applicable to loans secured by real property and supported by letters of credit. This conclusion was reasonable, particularly in view of the uncertainties the financial community evidently faced after the Court of Appeal's decision. (See, e.g., Murray, What *Should I Do With This Letter of Credit?* (Cont.Ed.Bar 1994) 17 Real Prop. L. Rptr. 133, 138-140.)

In sum, the Court of Appeal erred in concluding the Legislature's enactment of Senate Bill No. 1612 had no effect on this case. The Legislature explicitly intended to abrogate the Court of Appeal's prior decision and make certain the parties' obligations when letters of credit supported loans also secured by real property. The Legislature manifestly intended the *253 respective obligations of the parties to a letter of credit transaction should remain unaffected by the antideficiency laws, whether those obligations arose before or after enactment of Senate Bill No. 1612. Accordingly, we conclude the judgment of the Court of Appeal should be reversed. FN9

FN9 Western belatedly claims it should not be liable for prejudgment interest on the amount of the letter of credit it dishonored. It argues it should not be "punished" for seeking a declaration of its rights in a novel and complex case. The Court of Appeal decided that "if it is ultimately determined that Western is liable to the Bank on the letters of credit then it must follow that it is liable for legal interest thereon from and after the day when its obligation to pay on the letters arose. (Civ. Code, § 3287, subd. (a).)" Western did not petition for review of this aspect of the Court of Appeal decision. In any event, Western's liability for prejudgment interest is clear. The award of this interest is not imposed for the sake of punishment. The award depends only on whether Western knew or could compute the amount the Bank was entitled to recover on the letters of credit. (*Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154, 1173 [286 Cal.Rptr. 146].) The Court of Appeal correctly assessed Western's liability for prejudgment interest.

Disposition

The judgment of the Court of Appeal is reversed, and the cause remanded for further proceedings consistent with this opinion.

George, C. J., Baxter, J., and Brown, J., concurred.

WERDEGAR, J.,

Concurring and Dissenting.-I concur in the majority's conclusion that California Uniform Commercial Code section 5114, subdivision (2)(b), does not excuse Western Security Bank, N.A. (Western), the issuer, from honoring its letter of credit upon demand for payment by Beverly Hills Business Bank (the Bank), the beneficiary. I would not, however, reach this conclusion under the majority's reasoning that Senate Bill No. 1612 (Stats. 1994, ch. 611) merely declared existing law and that, prior to the bill's enactment, the antideficiency law had no effect on letters of credit. Instead, I agree with Justice Mosk that section 5114 simply does not bear the interpretation that the use of a letter of credit to support an obligation secured by a mortgage or deed of trust constitutes "fraud in the transaction." (Cal. U. Com. Code, § 5114, subd. (2); see conc. & dis. opn. of Mosk, J., *post*, at pp. 262-263.) Thus, Western was obliged to honor the Bank's demand for payment.

The conclusion that the Bank may properly draw upon the letter of credit does not compel the further conclusion that the antideficiency law ultimately

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offers no protection to Vista Place Asssociates. This is illustrated by a comparison of the majority opinion and the separate opinion of Justice Mosk, which agree on the former point but disagree on the latter. In my view, the Bank's petition for review of a decision rejecting its claim (as *254 beneficiary) against Western (as issuer) under superseded law does not present an appropriate vehicle for broader pronouncements on the antideficiency law's effect on other claims and other parties. Because the Legislature in Senate Bill No. 1612 has articulated rules that will govern all future letters of credit, and because letters of credit typically expire after a finite period, the status of residual letters of credit issued before the bill's effective date will soon become an academic question. In contrast, whether the antideficiency law should as a general matter be expansively or narrowly construed remains of vital importance, as demonstrated by the interest in this case shown by amici curiae involved in the purchase and sale of real estate. Under these circumstances, the principle of judicial restraint counsels against the majority's sweeping declaration that the reach of the antideficiency law prior to Senate Bill No. 1612 was too narrow to affect the respective obligations of the parties to a letter of credit transaction.

Underlying the broad declaration just mentioned is the majority's erroneous conclusion that Senate Bill No. 1612 merely clarified existing law and, thus, may be applied to transactions entered into before the bill's operative date. Before that date, the antideficiency law did not distinguish between residential and nonresidential real estate transactions. Now, however, as amended by Senate Bill No. 1612, the antideficiency law does distinguish between residential and nonresidential real estate transactions. New Code of Civil Procedure section 580.7, which the bill added, makes a letter of credit unenforceable when issued to avoid the default of an existing loan and "[t]he existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer." (*Id.*, subd. (b)(3).)

In light of this provision, we may conclude that letters of credit before Senate Bill No. 1612 either were enforceable in the specified residential real estate transactions but now are not, or were not enforceable in all other real estate transactions but now are. This case does not require us to choose between these possibilities. Either way, Senate Bill No. 1612 went beyond mere clarification to change the effective scope of the antideficiency law. To apply it retroactively would change the legal consequences of past acts. Under these circumstances, it is appropriate to apply the ordinary presumption that a legislative act operates prospectively, and inappropriate to apply to this case the new set of rules articulated in Senate Bill No. 1612.

MOSK, J.,

Concurring and Dissenting.-I agree with the majority that the issue before us is not whether Senate Bill No. 1612 (1993-1994 Reg. Sess.) (hereafter Senate Bill No. 1612) has retrospective application. It does not. *255 Rather, we must determine what the law was *before* Senate Bill No. 1612 was enacted to provide, in effect, a "standby letter of credit exception" to the antideficiency statutes.

I disagree with the majority that Senate Bill No. 1612 did not change prior law. In my view, far from merely "clarifying" the "true" meaning of prior law-as the majority implausibly assert-its numerous amendments and additions to the statutes reversed what the Court of Appeal aptly referred to as "the fifty years of consistent solicitude which California courts have given to the foreclosed purchase money mortgagee." FN1

FN1 Among other things, Senate Bill No.

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1612 amended Civil Code section 2787, added Code of Civil Procedure sections 580.5 and 580.7, and amended California Uniform Commercial Code former section 5114. (See Stats. 1994, ch. 611, §§ 1-6.) It appears, however, that our decision in this matter will have limited application. It will operate only when: (a) a lender obtained a standby letter of credit prior to September 15, 1994, the effective date of Senate Bill No. 1612, to support a transaction secured by a deed of trust against real property; (b) the creditor defaulted on the deed of trust; (c) the lender elected to foreclose on by way of trustee's sale rather than through judicial foreclosure; and (d) the lender thereafter demanded payment under the standby letter of credit. In view of the limited precedential value of this case, a better course would have been to dismiss review as improvidently granted.

As the majority concede, a legislative declaration of an existing statute's meaning is neither binding nor conclusive. "The Legislature has no authority to interpret a statute. That is a judicial task." (*Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8 [185 Cal.Rptr. 582]; see also *California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 213 [187 P.2d 702]; *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 326 [109 P.2d 935].) As the majority also concede, the legislative interpretation of prior law in this case is particularly unworthy of deference: Nothing in the previous legislative history of letter of credit statutes suggests an intent to create an exception to the antideficiency statutes. Indeed, it is apparently only recently that standby letters of credit have been used in real estate transactions.

Accordingly, unlike the majority, I conclude that before Senate Bill No. 1612, standby letters of credit were not exempt from the antideficiency statutes precluding creditors from obtaining a deficiency judgment from a creditor following nonjudicial foreclosure on a real property loan.

I.

As the Court of Appeal emphasized, before Senate Bill No. 1612, the potential conflict between the letters of credit statutes and the antideficiency statutes posed a question of first impression, arising from the relatively recent innovation of the use of standby letters of credit as additional security ***256** for real estate loans. Does the so-called "independence principle"-under which letters of credit stand separate and apart from the underlying transaction-constitute an exception to the antideficiency statutes that bar deficiency judgments after a nonjudicial foreclosure on real property?

The majority conclude that even before Senate Bill No. 1612, there was no restriction on the right of a creditor to demand payment on a standby letter of credit after a nonjudicial foreclosure on real property. They are wrong.

Under the so-called "independence principle," the issuer of a standby letter of credit "must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary." (Cal. U. Com. Code, former § 5114, subd. (1), as amended by Stats. 1994, ch. 611, § 4.) In turn, the issuer of a standby letter of credit "is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit." (*Id.*, subd. (3).) FN2

FN2 As the reference to "goods or documents" in the statute suggests, the drafters appear to have contemplated use of letters of credit in commercial financial transactions, not as additional security in real es-

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tate transactions.

A standby letter of credit specifically operates as a means of guaranteeing payment in the event of a future default. "A letter of credit is an engagement by an issuer (usually a bank) to a beneficiary, made at the request of a customer, which binds the bank to honor drafts up to the amount of the credit upon the beneficiary's compliance with certain conditions specified in the letter of credit. The customer is ultimately liable to reimburse the bank. The traditional function of the letter of credit is to finance an underlying customer's beneficiary contract for the sale of goods, directing the bank to pay the beneficiary for shipment. A different function is served by the 'standby' letter of credit, which directs the bank to pay the beneficiary not for his own performance but upon the customer's default, thereby serving as a guarantee device." (Note, "*Fraud in the Transaction": Enjoining Letters of Credit During the Iranian Revolution* (1980) 93 Harv. L.Rev. 992, 992-993, fns. omitted.)

Thus, in practical effect, a standby letter of credit constitutes a promise to provide additional funds in the event of a future default or deficiency. As such, prior to passage of Senate Bill No. 1612, it potentially came up against the restrictions of the antideficiency statutes barring a creditor from obtaining additional funds from a debtor after a nonjudicial foreclosure. Indeed, as *257 the parties concede, nothing in the applicable statutes or legislative history prior to the amendments and additions enacted by Senate Bill No. 1612 created any specific exception to the antideficiency statutes for standby letters of credit. Nor did anything in the applicable statutes or legislative history "imply" that the antideficiency statutes must yield to the so-called "independence principle," based on public policy or otherwise.

We have previously summarized the history and purpose of the antideficiency statutes as follows.

"Prior to 1933, a mortgagee of real property was required to exhaust his security before enforcing the debt or otherwise to waive all rights to his security [citations]. However, having resorted to the security, whether by judicial sale or private nonjudicial sale, the mortgagee could obtain a deficiency judgment against the mortgagor for the difference between the amount of the indebtedness and the amount realized from the sale. As a consequence during the great depression with its dearth of money and declining property values, a mortgagee was able to purchase the subject real property at the foreclosure sale at a depressed price far below its normal fair market value and thereafter to obtain a double recovery by holding the debtor for a large deficiency. [Citations.] In order to counteract this situation, California in 1933 enacted fair market value limitations applicable to both judicial foreclosure sales ([Code Civ. Proc.,] § 726) and private foreclosure sales ([*id.*,] § 580a) which limited the mortgagee's deficiency judgment after exhaustion of the security to the difference between the fair [market] value of the property at the time of the sale (irrespective of the amount actually realized at the sale) and the outstanding debt for which the property was security. Therefore, if, due to the depressed economic conditions, the property serving as security was sold for less than the fair [market] value as determined under section 726 or section 580a, the mortgagee could not recover the amount of that difference in this action for a deficiency judgment. [Citation.]

"In certain situations, however, the Legislature deemed even this partial deficiency too oppressive. Accordingly, in 1933 it enacted section 580b [citation] which barred deficiency judgments altogether on purchase money mortgages. 'Section 580b places the risk of inadequate security on the purchase money mortgagee. A vendor is thus discouraged from overvaluing the security. Precarious land promotion schemes are discouraged, for the security value of the land gives purchasers a clue as to its true market value. [Citation.] If inadequacy of se-

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curity results, not from overvaluing, but from a decline in property values during a general or local depression, section 580b prevents the aggravation of the downturn that would result if defaulting ***258** purchasers were burdened with large personal liability. Section 580b thus serves as a stabilizing factor in land sales.' [Citations.]

"Although both judicial foreclosure sales and private nonjudicial foreclosure sales provided for identical deficiency judgments in nonpurchase money situations subsequent to the 1933 enactment of the fair value limitations, one significant difference remained, namely property sold through judicial foreclosure was subject to the statutory right of redemption ([Code Civ. Proc.,] § 725a), while property sold by private foreclosure sale was not redeemable. By virtue of sections 725a and 701, the judgment debtor, his successor in interest or a junior lienor could redeem the property at any time during one year after the sale, frequently by tendering the sale price. The effect of this right of redemption was to remove any incentive on the part of the mortgagee to enter a low bid at the sale (since the property could be redeemed for that amount) and to encourage the making of a bid approximating the fair market value of the security. However, since real property purchased at a private foreclosure sale was not subject to redemption, the mortgagee by electing this remedy, could gain irredeemable title to the property by a bid substantially below the fair value and still collect a deficiency judgment for the difference between the fair value of the security and the outstanding indebtedness.

"In 1940 the Legislature placed the two remedies, judicial foreclosure sale and private nonjudicial foreclosure sale on a parity by enacting section 580d [citation]. Section 580d bars 'any deficiency judgment' following a private foreclosure sale. 'It seems clear ... that section 580d was enacted to put judicial enforcement on a parity with private enforcement. This result could be accomplished by giving the debtor a right to redeem after a sale under the power. The right to redeem, like proscription of a deficiency judgment, has the effect of making the security satisfy a realistic share of the debt. [Citation.] By choosing instead to bar a deficiency judgment after private sale, the Legislature achieved its purpose without denying the creditor his election of remedies. If the creditor wishes a deficiency judgment, his sale is subject to statutory redemption rights. If he wishes a sale resulting in nonredeemable title, he must forego the right to a deficiency judgment. In either case his debt is protected.' " (*Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 600-602 [125 Cal.Rptr. 557, 542 P.2d 981], fns. omitted.)

Over the several decades since their enactment, our courts have construed the antideficiency statutes liberally, rejecting attempts to circumvent the proscriptions against deficiency judgments after nonjudicial foreclosure. "It is well settled that the proscriptions of section 580d cannot be avoided through artifice ...." (***259***Rettner v. Shepherd* (1991) 231 Cal.App.3d 943, 952 [282 Cal.Rptr. 687]; accord, *Freedland v. Greco* (1955) 45 Cal.2d 462, 468 [289 P.2d 463] [In construing the antideficiency statutes, " 'that construction is favored which would defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute, or ... to accomplish by indirection what the statute forbids.' "]; *Simon v. Superior Court* (1992) 4 Cal.App.4th 63, 78 [5 Cal.Rptr.2d 428].)

Nor can the antideficiency protections be waived by the borrower at the time the loan was made. (See Civ. Code, § 2953 [such waiver "shall be void and of no effect"]; *Valinda Builders, Inc. v. Bissner* (1964) 230 Cal.App.2d 106, 112 [40 Cal.Rptr. 735] [The debtor's waiver agreement was "contrary to public policy, void and ineffectual for any purpose."].)

In this regard, as the Court of Appeal observed, two decisions are of particular relevance here: *Union*

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Bank v. Gradsky (1968) 265 Cal.App.2d 40 [71 Cal.Rptr. 64] (hereafter *Gradsky*), and *Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508 [259 Cal.Rptr. 425] (hereafter *Commonwealth*).

In *Gradsky*, the Court of Appeal held that Code of Civil Procedure section 580d operated to preclude a lender from collecting the unpaid balance of a promissory note from the guarantor after a nonjudicial foreclosure on the real property securing the debt. It concluded that if the guarantor could successfully assert an action against the borrower for reimbursement, "the obvious result is to permit the recovery of a 'deficiency' judgment against the [borrower] following a nonjudicial sale of the security under a different label." (*Gradsky*, *supra*, 265 Cal.App.2d at pp. 45-46.) "The Legislature clearly intended to protect the [borrower] from personal liability following a nonjudicial sale of the security. No liability, direct or indirect, should be imposed upon the [borrower] following a nonjudicial sale of the security. To permit a guarantor to recover reimbursement from the debtor would permit circumvention of the legislative purpose in enacting section 580d." (*Id.* at p. 46.)

In *Commonwealth*, borrowers purchased real property with a loan secured by promissory notes provided by a bank. At the bank's request, they obtained policies of mortgage guarantee insurance to secure payment on the promissory notes. They also signed indemnity agreements promising to reimburse the mortgage insurer for any funds it paid out under the policy. When the borrowers defaulted on the promissory notes, the bank foreclosed nonjudicially on the real property. It then collected on the mortgage insurance; the mortgage insurer then brought an action for reimbursement on the indemnity agreements. ***260**

The Court of Appeal in *Commonwealth* held that reimbursement was barred by Code of Civil Procedure section 580d. It rejected the argument that the indemnity agreements constituted separate and independent obligations: "The instant indemnity agreements add nothing to the liability [the borrowers] already incurred as principal obligors on the notes .... To splinter the transaction and view the indemnity agreements as separate and independent obligations ... is to thwart the purpose of section 580d by a subterfuge [citation], a result we cannot permit." (*Commonwealth*, *supra*, 211 Cal.App.3d at p. 517.)

The majority's attempt to distinguish *Gradsky* and *Commonwealth*, by characterizing them as grounded in subrogation law, is unpersuasive. Indeed, in *Commonwealth*, subrogation law was not directly in issue; the indemnity obligation provided a contract upon which to base collection. FN3

FN3 In any event, the analogy between standby letters of credit and guarantees is not as "forced" as the majority would suggest. As one commentator recently observed, "upon closer analysis, the borders between standby credits and contracts of guarantee are not so well settled as they may first appear." (McLaughlin, *Standby Letters of Credit and Guaranties: An Exercise in Cartography* (1993) 34 Wm. & Mary L.Rev. 1139, 1140; see also Alces, *An Essay on Independence, Interdependence, and the Suretyship Principle* (1993) 1993 U. Ill. L.Rev. 447 [rejecting distinction between letters of credit and "secondary obligations," i.e., guarantees and sureties].) Moreover, "courts have long recognized that, in a sense, issuers of credits 'must be regarded as sureties.' [Citation.] A seller of goods often insists on a commercial letter of credit because he is unsure of the buyer's ability to pay. The standby letter of credit arises out of situations in which the beneficiary wants to guard against the applicant's nonperformance. In both instances, the credit serves in

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> the nature of a guaranty." Dolan, The Law of Letters of Credit: Commercial and Standby Credits (2d ed. 1991) § 2.10[1], pp. 2-61 to 2-62.)

The majority miss the point. As the Court of Appeal in this matter explained: "*Gradsky* and *Commonwealth* reflect the strong judicial concern about the efforts of secured real property lenders to circumvent section 580d by the use of financial transactions between debtors and third parties which involve post-nonjudicial foreclosure debt obligations for the borrowers. Their common and primary focus is on the lender's requirement that the debtor make arrangements with a third party to pay a portion or all of the mortgage debt remaining after a foreclosure, i.e., to pay the debtor's deficiency."

The Legislature, in enacting Senate Bill No. 1612, expressly abrogated the Court of Appeal decision in this matter and gave primacy to the so-called "independence principle" as against the antideficiency protections. Its additions and amendments to the statutes-lobbied for, and drafted by, the California Bankers Association-significantly altered prior law. Senate Bill No. 1612, therefore, should have prospective application only. [261]

In their strained attempt to reach the conclusion that Senate Bill No. 1612 governs this case, the majority adopt the fiction that a standby letter of credit is an "idiosyncratic" form of "security" or the "functional equivalent" of cash collateral. They offer no sound support for such an approach. There is none. [FN4]

> FN4 The principal "authority" cited by the majority for the proposition that standby letters of credit are the "functional equivalent" of cash collateral is a student law review note published over a decade ago-and apparently never cited in any case in California or elsewhere. (Comment, *The Independence Rule in Standby Letters of Credit* (1985) 52 U. Chi. L.Rev. 218.) Significantly, the note nowhere discusses the use of standby letters of credit in transactions involving purchase money mortgages or the potential conflict between the so-called "independence principle" and antideficiency statutes. Indeed, it assumes that "[t]hose who engage in standby letter of credit transactions are usually large corporate or governmental entities with access to high-quality counsel and are thus in a position to evaluate and respond to the risks involved." (*Id.* at p. 238.) Needless to say, that is often *not* the case in real property transactions, particularly those involving residential property. As a leading commentator observed: "the motivation of the parties to a real estate secured transaction is frequently other than purely commercial, and their relative bargaining power is often grossly disproportionate." (Hetland & Hansen, *The "Mixed Collateral" Amendments to California's Commercial Code-Covert Repeal of California's Real Property Foreclosure and Antideficiency Provisions or Exercise in Futility?* (1987) 75 Cal.L.Rev. 185, 188, fn. omitted.)

As the Court of Appeal observed, from the perspective of the debtor, a standby letter of credit is not cash or its equivalent. It is, instead, a promise to provide additional funds *in the event of future default or deficiency* and has the practical consequence of requiring the debtor to pay *additional* money on the debt *after* default or foreclosure. [FN5] Moreover, unlike cash, which can be pledged as collateral security only once, a standby letter of credit does not require a debtor to part with its own funds until payment is made and thus permits a borrower to use standby letters of credit in a large number of transactions separately. Cash collateral, by contrast, does not impose personal liability on the borrower following a trustee's sale and does not

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encourage speculative lending practices.

> FN5 Although it appears to be uncommon, an issuer of a standby letter of credit may demand security from its customer in the form of cash collateral or personal property as a condition for issuing the letter of credit. In the event of a draw on the letter of credit, the issuer would then have recourse to the pledged security, up to the value of the draw, without requiring its customer to pay additional money. Whether a real estate lender's draw on a standby letter of credit backed by security, and not by a mere promise to pay, would fall within the mixed security rule is a difficult question that need not be addressed here.

As the Court of Appeal observed: "For us to conclude that such use of a standby letter of credit is the same as an increased cash investment (whether or not from borrowed funds) is to deny reality and to invite the very overvaluation and potential aggravation of an economic downturn which the antideficiency legislation was originally enacted to prevent." ***262**

II.

The Court of Appeal correctly concluded that, before Senate Bill No. 1612, there was no implied exception to the antideficiency statutes for letters of credit. It erred, however, in holding that Western Security Bank, N.A. (Western) could have refused to honor the letter of credit on the ground that the Beverly Hills Business Bank (Bank), in presenting the letters of credit after a nonjudicial foreclosure, worked an "implied" fraud on Vista Place Associates (Vista).

The Court of Appeal cited former California Uniform Commercial Code former section 5114, subdivision (2)(b), which provides that when there has been a notification from the customer of "fraud, forgery or other defect not apparent on the face of the documents," the issuer "may"-but is not obligated to-"honor the draft or demand for payment."(Cal. U. Com. Code, § 5114, subd. (2)(b) as amended by Stats. 1994, ch. 611, § 4.) FN6 The statute is inapplicable under the present facts.

> FN6 An issuer's obligations and rights are now governed by California Uniform Commercial Code section 5108, enacted in 1996 as part of Senate Bill No. 1599. (Stats. 1996, ch. 176, § 7.) The same legislation repealed section 5114, relating to the issuer's duty to honor a draft or demand for payment, as part of the repeal of division 5, Letters of Credit. (Stats. 1996, ch. 176, § 6.)

Western, presented with a demand for payment on a letter of credit, was limited to determining whether the documents presented by the beneficiary complied with the letter of credit-a purely ministerial task of comparing the documents presented against the description of the documents in the letter of credit. If the documents comply on their face, the issuer must honor the draw, regardless of disputes concerning the underlying transaction. (*Lumbermans Acceptance Co. v. Security Pacific Nat. Bank* (1978) 86 Cal.App.3d 175, 178 [150 Cal.Rptr. 69]; Cal. U. Com. Code, former § 5109, subd. (2) as added by Stats. 1963, ch. 819, § 1, p. 1934.) Thus, in this case, Western was not entitled to look beyond the documents presented by the Bank and refuse to honor the standby letter of credit based on a potential violation of the antideficiency statutes in the underlying transaction.

In my view, the concurring and dissenting opinion by Justice Kitching in the Court of Appeal correctly reconciled the policies behind standby letter of credit law and the antideficiency provisions of Code of Civil Procedure section 580d, as they existed *before* Senate Bill No. 1612. Thus, I would conclude that Western was obligated, under the so-

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called "independence principle," to honor the standby letter of credit presented by the Bank. None of the limited exceptions to that rule applied. Western was not, however, without recourse. It was entitled to seek reimbursement from Vista, pursuant *263 to former California Uniform Commercial Code former section 5114, subdivision (3) and its promissory notes. Vista, in turn, could seek disgorgement from the Bank, if it has not legally waived its protection under Code of Civil Procedure section 580d-an issue that is not before us and should be remanded to the trial court. As Justice Kitching's concurrence and dissent concluded, "[t]his procedure would retain certainty in the California letter of credit market while implementing the policies supporting section 580d."

Kennard, J., concurred. *264

Cal. 1997.
Western Security Bank v. Superior Court
15 Cal.4th 232, 933 P.2d 507, 62 Cal.Rptr.2d 243, 32 UCC Rep.Serv.2d 534, 97 Cal. Daily Op. Serv. 2554, 97 Daily Journal D.A.R. 4507

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Effective:|See Text Amendments|

West's Annotated California Codes Currentness
Code of Civil Procedure (Refs & Annos)
Part 3. Of Special Proceedings of a Civil Nature (Refs & Annos)
Title 7. Eminent Domain Law (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)
→ § 1230.030. Acquisition of property; purchase, eminent domain or other means

Nothing in this title requires that the power of eminent domain be exercised to acquire property necessary for public use. Whether property necessary for public use is to be acquired by purchase or other means or by eminent domain is a decision left to the discretion of the person authorized to acquire the property.

CREDIT(S)

(Added by Stats.1975, c. 1275, p. 3410, § 2, operative July 1, 1976.)

LAW REVISION COMMISSION COMMENTS

1975 Addition

Section 1230.030 makes clear that whether property is to be acquired by purchase or other means, or by exercise of the power of eminent domain, is a discretionary decision. Nothing in this title requires that the power of eminent domain be exercised; but, if the decision is that the power of eminent domain is to be used to acquire property for public use, the provisions of this title apply except as otherwise specifically provided by statute. See Section 1230.020. Compare Govt.Code § 15854 (property acquired pursuant to Property Acquisition Law).

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Assessing the benefits of California's new valuation rule for partial condemnations. Juliet E. Cox, 88 Cal. L. Rev. 565 (2000).

A profit for the taking: Sale of condemned property after abandonment of the proposed public use. Kevin L. Cooney, 74 Wash. U. L.Q. 751 (1996).

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Valuation of goodwill. Gregory M. Bergman (1977) 53 Los Angeles B.J. 87.

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Cal. Civ. Prac. Real Property Litigation § 15:4, Public Acquisition of Property by Means Other Than Condemnation.

Treatises and Practice Aids

8 Witkin, California Summary 10th Constitutional Law § 1170, Nature, Organization, and Scope.

UNITED STATES SUPREME COURT

Takings clause, substantial advancement of legitimate state interests test, due process, statute limiting rent paid by dealers leasing company-owned service stations, see Lingle v. Chevron U.S.A. Inc., 2005, 125 S.Ct. 2074, 544 U.S. 528, 161 L.Ed.2d 876, on remand 415 F.3d 1027.

NOTES OF DECISIONS

Effect of land grant 1

1. Effect of land grant

A grant made, with the necessary formalities, by the alcalde of the pueblo of San Francisco, after the acquisition of California by the United States, and before the incorporation of the city, was valid, and operated to deprive the pueblo and its successor, the city, of the right to open streets through the land granted, except upon compensation paid or secured, and in pursuance of proceedings prosecuted for the purpose. Scott v. Dyer (1880) 5 P.C.L.J. 223, 54 Cal. 430.
Eminent Domain 95

West's Ann. Cal. C.C.P. § 1230.030, CA CIV PRO § 1230.030

Current with urgency legislation through Ch. 156 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 26 of the 2009-2010 3rd Ex.Sess., and Ch. 24 of the 2009-2010 4th Ex.Sess., Governor's Reorganization Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 8/1/2009

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Westlaw

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Effective: January 1, 2007 to December 31, 2009

West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions (Refs & Annos)
Part 10. School Bonds (Refs & Annos)
Chapter 12. State School Building Lease-Purchase Law of 1976 (Refs & Annos)
Article 1. General Provisions (Refs & Annos)
→ **§ 17002. Definitions**

The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(b) "Board" means the State Allocation Board.

(c) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(d)(1) "Good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria. Until the school facility inspection and evaluation instrument is approved by the board, "good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined by the interim evaluation instrument developed by the Office of Public School Construction or a local evaluation instrument that meets the same criteria as the interim evaluation instrument. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall not require capital enhancements beyond the standards to which the facility was designed and constructed. In order to provide that school facilities are reviewed to be clean, safe, and functional, the school facility inspection

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and evaluation instrument and local evaluation instruments shall include at least the following criteria:

(A) Gas systems and pipes appear and smell safe, functional, and free of leaks.

(B)(i) Mechanical systems, including heating, ventilation, and air-conditioning systems, are functional and unobstructed.

(ii) Appear to supply adequate amount of air to all classrooms, work spaces, and facilities.

(iii) Maintain interior temperatures within normally acceptable ranges.

(C) Doors and windows are intact, functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.

(D) Fences and gates are intact, functional, and free of holes and other conditions that could present a safety hazard to pupils, staff, or others. Locks and other security hardware function as designed.

(E) Interior surfaces, including walls, floors, and ceilings, are free of safety hazards from tears, holes, missing floor and ceiling tiles, torn carpet, water damage, or other cause. Ceiling tiles are intact. Surfaces display no evidence of mold or mildew.

(F) Hazardous and flammable materials are stored properly. No evidence of peeling, chipping, or cracking paint is apparent. No indicators of mold, mildew, or asbestos exposure are evident. There is no apparent evidence of hazardous materials that may pose a threat to the health and safety of pupils or staff.

(G) Structures, including posts, beams, supports for portable classrooms and ramps, and other structural building members appear intact, secure, and functional as designed. Ceilings and floors are not sloping or sagging beyond their intended design. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines structural components.

(H) Fire sprinklers, fire extinguishers, emergency alarm systems, and all emergency equipment and systems appear to be functioning properly. Fire alarm pull stations are clearly visible. Fire extinguishers are current and placed in all required areas, including every classroom and assembly area. Emergency exits are clearly marked and unobstructed.

(I) Electrical systems, components, and equipment, including switches, junction boxes, panels, wiring, outlets, and light fixtures, are securely enclosed, properly covered and guarded from pupil access, and appear to be working properly.

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(J) Lighting appears to be adequate and working properly. Lights do not flicker, dim, or malfunction, and there is no unusual hum or noise from light fixtures. Exterior lights onsite appear to be working properly.

(K) No visible or odorous indicators of pest or vermin infestation are evident.

(L) Interior and exterior drinking fountains are functional, accessible, and free of leaks. Drinking fountain water pressure is adequate. Fountain water is clear and without unusual taste or odor, and moss, mold, or excessive staining is not evident.

(M)(i) Restrooms and restroom fixtures are functional.

(ii) Appear to be maintained and stocked with supplies regularly.

(iii) Appear to be accessible to pupils during the schoolday.

(iv) Appear to be in compliance with Section 35292.5.

(N) The sanitary sewer system controls odor as designed, displays no signs of stoppage, backup, or flooding, in the facilities or on school grounds, and appears to be functioning properly.

(O) Roofs, gutters, roof drains, and downspouts appear to be functioning properly and are free of visible damage and evidence of disrepair when observed from the ground inside and outside of the building.

(P) The school grounds do not exhibit signs of drainage problems, such as visible evidence of flooded areas, eroded soil, water damage to asphalt playgrounds or parking areas, or clogged storm drain inlets.

(Q) Playground equipment and exterior fixtures, seating, tables, and equipment are functional and free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(R) School grounds, fields, walkways, and parking lot surfaces are free of significant cracks, trip hazards, holes, deterioration that affects functionality or safety, and other health and safety hazards.

(S) Overall cleanliness of the school grounds, buildings, common areas, and individual rooms demonstrates that all areas appear to have been cleaned regularly, and are free of accumulated refuse and unabated graffiti. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that the school is in session.

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(2)(A) On or before January 1, 2007, the Office of Public School Construction shall develop the school facility inspection and evaluation instrument and instructions for users. The school facility inspection and evaluation instrument and local evaluation instruments that meet the minimum criteria of this subdivision shall include a system that will evaluate each facility, based on the criteria listed in paragraph (1), on a scale of "good," "fair," or "poor," as developed by the Office of Public School Construction, and provide an overall summary of the conditions at each school on a scale of "exemplary," "good," "fair," or "poor."

(B) On or before July 1, 2007, the Office of Public School Construction, in consultation with county offices of education, shall define objective criteria for determining the overall summary of the conditions of schools.

(C) For purposes of this paragraph, "users" means local educational agencies that participate in either of the programs established pursuant to this chapter, Chapter 12.5 (commencing with Section 17070.10), or Section 17582 .

(e) "Lease" includes a lease with an option to purchase.

(f) "Project" means the facility being constructed or acquired by the state for rental to the applicant school district and may include the reconstruction or modernization of existing buildings, construction of new buildings, the grading and development of sites, acquisition of sites therefor and any easements or rights-of-way pertinent thereto or necessary for its full use including the development of streets and utilities.

(g) "Property" includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

CREDIT(S)

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.2004, c. 900 (S.B.550), § 3, eff. Sept. 29, 2004; Stats.2006, c. 704 (A.B.607), § 4.)

HISTORICAL AND STATUTORY NOTES

2010 Electronic Pocket Part Update

2004 Legislation

Appropriations, legislative intent, findings and declarations, cost reimbursement and urgency effective provisions relating to Stats.2004, c. 900 (S.B.550), see Historical and Statutory Notes under Education Code § 1240.

2006 Legislation

For cost reimbursement provision relating to Stats.2006, c. 704 (A.B.607), see Historical and Statutory Notes

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under Education Code § 1240.

2002 Main Volume

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Former § 17002, added by Stats.1976, c. 1010, § 2, derived from Education Code 1959, § 19893, added by Stats.1962, 1st Ex.Sess., c. 21, p. 183, § 1, relating to the definition of committee, board and fund, was repealed by Stats.1995, c. 552 (S.B.764), § 8.

Derivation: Former § 17702, enacted by Stats.1976, c. 1010, § 2, amended by Stats.1977, c. 381, § 3; Stats.1992, c. 758, § 2.

Education Code 1959, § 19352, added by Stats.1975, c. 1009, p. 2377, § 1.

CROSS REFERENCES

County Superintendent of Schools, general duties and reports, see Education Code § 1240.
Facilities maintenance account, exemption for facilities in good repair, see Education Code § 17070.766.
School districts, fees paid as cost of project, see Government Code § 54999.5.
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Current with all laws through c. 652 of the 2009 portion of the 2009-2010 Reg.Sess., the end of the 2009-2010 1st, 2nd and 4th Ex.Sess., urgency legislation through c. 31 of the 2009-2010 3rd Ex.Sess., and c. 5 of the 7th Ex.Sess., Gov.'s Reorg. Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 12/1/2009

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Education Code (Refs & Annos)
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions (Refs & Annos)
Part 10.5. School Facilities (Refs & Annos)
Chapter 5. Property Maintenance and Control (Refs & Annos)
Article 1. Duties of Governing Board (Refs & Annos)

→ § 17565. Furnishing, repairing, insuring and renting of school property

The governing board of any school district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. The governing board may also insure the property against other perils. The insurance shall be written in any admitted insurer, or in any nonadmitted insurer to the extent and subject to the conditions prescribed in Section 1763 of the Insurance Code. Insurance on property of a district may be, in the discretion of the governing board, of the deductible type of coverage. By deductible type of coverage is meant a form of insurance under which the insurance becomes operative when the loss and damage exceeds an amount stipulated in the policy or policies.

The governing board, in their notice of bid for any school district construction, may indicate that it may elect to assume the cost of fire insurance by adding the coverage to the district's existing policy and in that event bids made on the construction shall be made in the alternative, with and without the fire insurance coverage included, and the governing board shall make its election as to who shall secure and pay for the insurance at the time of accepting the bid.

CREDIT(S)

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 17211.

For the source of this section's subject matter, see the Derivation Table preceding Education Code § 17210 (If you are using an electronic publication, see Refs & Annos).

CROSS REFERENCES

"Any school district", "all school districts", defined, see Education Code § 80.
School houses, insurability, see Insurance Code § 6040.

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Encyclopedias

CA Jur. 3d Schools § 165, Management and Control.

CA Jur. 3d Schools § 176, Purchase of Insurance.

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Renting school property 4
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1. Validity

School C. § 6.2 authorizing school districts to insure with mutual insurance company was not violative of Const. Art. 4, § 31 or Art. 12, § 13 on ground that it purported to authorize pledging of credit by political subdivision, where assessments against members of mutual insurance company were limited to five times amount of original premium, and the mutual company in which the district was insured issued no stock. Miller v. Johnson (1935) 4 Cal.2d 265, 48 P.2d 956. Schools 22

2. Preemption

The state has completely occupied the field of regulating public school building construction, and construction of such school buildings by school districts is not subject to the building regulations of a municipal corporation in which the building is constructed. Hall v. City of Taft (1956) 47 Cal.2d 177, 302 P.2d 574. Municipal Corporations 592(1)

3. Insurance

School district was a "person" within County Mutual Fire Insurance Act, and hence authorized by statute to become member of mutual insurance company, in view of authority given school trustees by statute to insure property of their districts in mutual insurance company. Miller v. Johnson (1935) 4 Cal.2d 265, 48 P.2d 956. Insurance 1145

Boards of trustees of school districts possessed no authority to place insurance of the school property other than that granted to them by statute. People ex rel. Northwestern Mut. Fire Ass'n v. Stanley (1924) 193 Cal. 428, 225 P. 1. Schools 79

Under statute, empowering boards of school trustees to insure school property, "such insurance to be written in any solvent insurance company doing business in this state or in any mutual insurance company organized under the laws of this state," a school board had no power to place fire insurance on school property with a mutual insurance company organized under the laws of another state. People ex rel. Northwestern Mut. Fire Ass'n v. Stanley (1924) 193 Cal. 428, 225 P. 1. Schools 79

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Although all school districts had to obtain insurance against hazards to which property was exposed and for which insurance was available, deductible form of insurance could be obtained by those districts with average daily attendance of 50,000 or more, and deductible coverage could in board's discretion have applied to some or all of perils to school property which were covered in usual fire insurance policy applicable to that type of property, including perils of physical damage to property other than those defined as "fire insurance" by Ins.C. § 2071. 40 Op.Atty.Gen. 33 (1962).

4. Renting school property

Statute empowering the school board to rent school property, did not mean to rent property for use of schools, because such property would not be "school property." Mahoney v. Board of Ed. (App. 1909) 12 Cal.App. 293, 107 P. 584. Schools 65

West's Ann. Cal. Educ. Code § 17565, CA EDUC § 17565

Current with urgency legislation through Ch. 155 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 26 of the 2009-2010 3rd Ex.Sess., and Ch. 24 of the 2009-2010 4th Ex.Sess., Governor's Reorganization Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 8/1/2009

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West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 1. General Education Code Provisions
Division 1. General Education Code Provisions (Refs & Annos)
Part 10.5. School Facilities (Refs & Annos)
Chapter 5. Property Maintenance and Control (Refs & Annos)
Article 2. Duties of District Clerks (Refs & Annos)
→ **§ 17593. Repair and supervision of property**

The clerk of each district except a district governed by a city or city and county board of education shall, under the direction of the governing board, keep the schoolhouses in repair during the time school is taught therein, and exercise a general care and supervision over the school premises and property during the vacations of the school.

CREDIT(S)

(Added by Stats.1996, c. 277 (S.B.1562), § 3, operative Jan. 1, 1998.)

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 17211.

For the source of this section's subject matter, see the Derivation Table preceding Education Code § 17210 (If you are using an electronic publication, see Refs & Annos).

CROSS REFERENCES

County Boards of Education,
Generally, see Education Code § 1000 et seq.
Appointment or election, see Const. Art. 9, § 7 and Education Code §§ 1000 et seq., 5000 et seq.
Duties and responsibilities, see Education Code § 1040 et seq.
Jurisdiction, organization and procedure, see Education Code § 1000 et seq.
Salaries and expenses, see Education Code § 1090 et seq.

West's Ann. Cal. Educ. Code § 17593, CA EDUC § 17593

Current with urgency legislation through Ch. 155 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 26 of the 2009-2010 3rd Ex.Sess., and Ch. 24 of the 2009-2010 4th Ex.Sess., Governor's Reorganization Plan No. 1 of

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2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 8/1/2009

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West's Annotated California Codes Currentness
Education Code (Refs & Annos)
Title 3. Postsecondary Education (Refs & Annos)
Division 7. Community Colleges (Refs & Annos)
Part 49. Community Colleges, Education Facilities (Refs & Annos)
Chapter 3. Management and Control of Property (Refs & Annos)
Article 1. General Provisions (Refs & Annos)
→ **§ 81601. Furnishing, repairing, insuring and renting of school property**

The governing board of a community college district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. The governing board may also insure the property against other perils. The insurance shall be written in any admitted insurer, or in any nonadmitted insurer to the extent and subject to the conditions prescribed in Section 1763 of the Insurance Code. Insurance on property of a district may be, in the discretion of the governing board, of the deductible type of coverage. By deductible type of coverage is meant a form of insurance under which the insurance becomes operative when the loss and damage exceeds an amount stipulated in the policy or policies.

The governing board, in their notice of bid for district construction, may indicate that it may elect to assume the cost of fire insurance by adding the coverage to the district's existing policy and in such event bids made on such construction shall be made in the alternative, with and without the fire insurance coverage included, and the governing board shall make its election as to who shall secure and pay for such insurance at the time of accepting the bid. The deductible amount of fire insurance for any community college district may exceed one thousand dollars ($1,000) for each occurrence.

CREDIT(S)

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

Derivation: Education Code 1959, § 15802 (see Derivation under present § 39601).

CROSS REFERENCES

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Average daily attendance, see Education Code § 84501.
Charges for use of school property for public purposes, see Education Code § 82542 et seq.
Charitable or nonprofit benefit and relief association, certificate of exemption to transact business, see Insurance Code §§ 10492, 10493.
County mutual fire insurer, writing of risk on schoolhouses, see Insurance Code § 6040.

LIBRARY REFERENCES

2003 Main Volume

Colleges and Universities 6(5).
Westlaw Topic No. 81.
C.J.S. Colleges and Universities § 14.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Universities and Colleges § 128, Insurance Against Loss.

NOTES OF DECISIONS

Insurance 1

1. Insurance

School C. § 6.2 (repealed; now this section) authorizing school districts to insure with mutual insurance company was not violative of Const. Art. 4, § 31 (repealed; see, now, Const. Art. 16, § 6) or Art. 12, § 13 (repealed; see, now, Const. Art. 16, § 17) on ground that it purported to authorize pledging of credit by political subdivision, where assessments against members of mutual insurance company were limited to five times amount of original premium, and the mutual company in which the district was insured issued no stock. Miller v. Johnson (1935) 4 Cal.2d 265, 48 P.2d 956. Schools 22

Although all school districts must obtain insurance against hazards to which property is exposed and for which insurance is available, deductible form of insurance may be obtained by those districts with average daily attendance of 50,000 or more, and deductible coverage may in board's discretion apply to some or all of perils to school property which are covered in usual fire insurance policy applicable to that type of property, including perils of physical damage to property other than those defined as "fire insurance" by Ins.C. § 2071. 40 Op.Atty.Gen. 33.

West's Ann. Cal. Educ. Code § 81601, CA EDUC § 81601
Current with all laws through c. 652 of the 2009 portion of the 2009-2010 Reg.Sess., the end of the 2009-2010 1st, 2nd and 4th Ex.Sess., urgency legislation through c. 31 of the 2009-2010 3rd Ex.Sess., and c. 5 of the 7th Ex.Sess., Gov.'s Reorg. Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 12/1/2009

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CEQA

The California Environmental Quality Act

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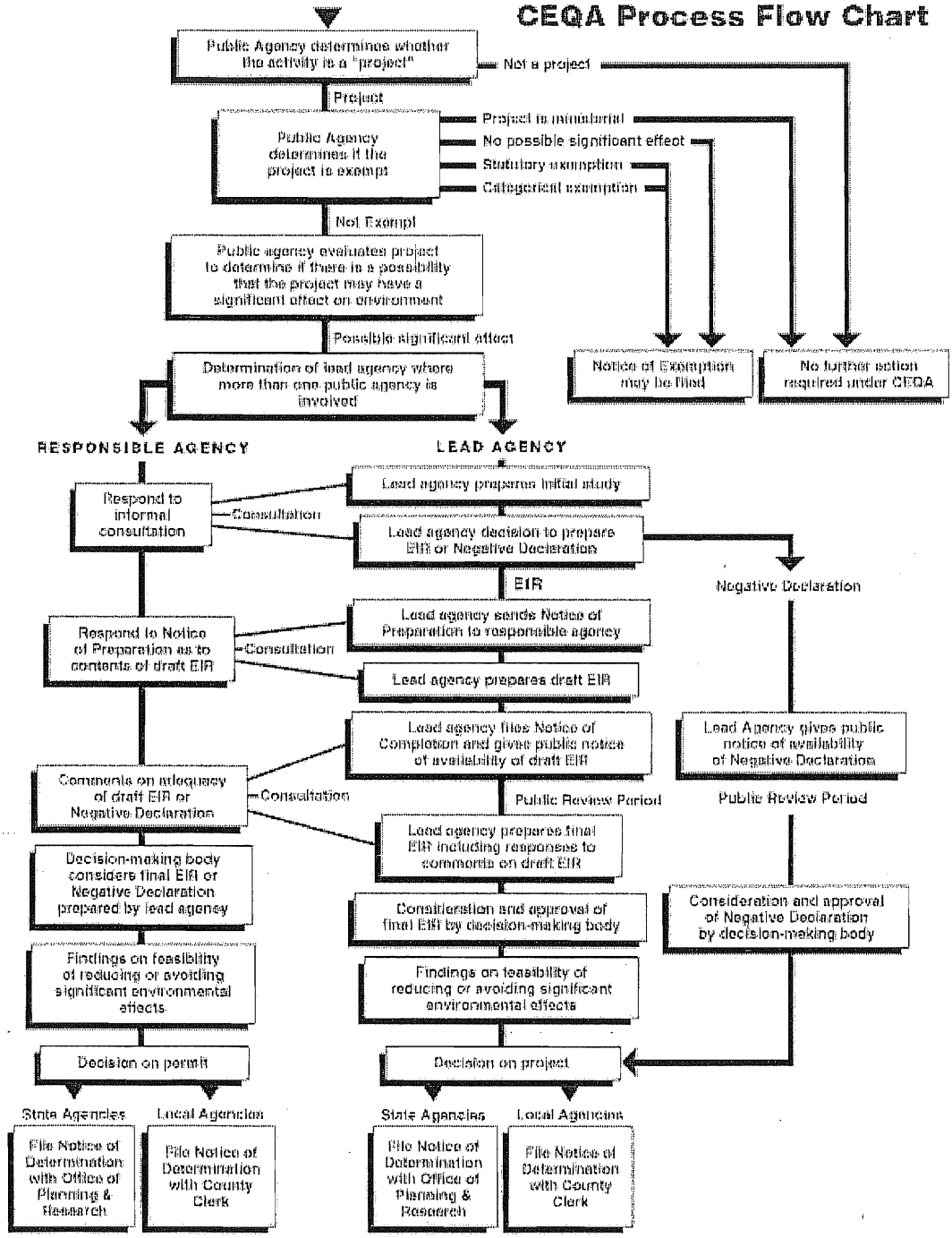
CEQA Process Flow Chart



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Working together to improve the educational environment for California's children

School Facility Program Handbook

A guide to assist with applying for and obtaining grant funds

May 2008

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Preface

Introduction

This handbook was developed by the Office of Public School Construction (OPSC) to assist school districts in applying for and obtaining "grant" funds for the new construction and modernization of schools under the provisions of the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). It is intended to be an overview of the program for use by school districts, parents, architects, the Legislature, and other interested parties on how a district or county superintendent of schools becomes eligible and applies for State funding. This handbook provides direction on accessing the processes leading to project approvals, insight to the various features of the School Facility Program (SFP), and includes suggestions on how to make the funding system as efficient as possible. For information not contained in this handbook, districts should consult with their respective project managers for assistance; or refer to additional project specific information contained in the SFP Regulations. The SFP Regulations are located on the OPSC Web site at www.opsc.dgs.ca.gov. The OPSC project managers are assigned by county, and a complete listing of project manager assignments, including telephone numbers and e-mail addresses, are also included on our Web site.

Things to Know

This updated version of the handbook includes various regulation changes that occurred between 2005 and 2007 and include:

- Critically Overcrowded School Facilities Program Amendments (effective 10/27/2005)
- Small High School Program (effective 03/14/2006)
- Alternative Enrollment Projection Methods (effective 05/15/2006)
- Re-Designation of Energy Funds (effective 08/21/2006)
- General Site Development Additional Grant (effective 09/05/2006)
- Multi-Story Replacement of Single-Story Facilities Amendments (effective 11/03/2006)
- Modernization Handicapped Access/Fire Code Excessive Cost Hardship Grant Amendments (effective 04/25/2007)
- Charter School Facility Program Amendments (effective 05/17/2007)

Where to Begin

Section 1, "School Facility Program Overview" and Section 2, "The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies" will provide general information. After reviewing these sections, the reader may want to review Section 4, "Application for Eligibility," because establishing eligibility is the first step in filing an application for either new construction or modernization funding. The remaining sections can be reviewed as the topics arise.

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Section 1

School Facility Program Overview

Introduction

The School Facility Program (SFP) was implemented in late 1998 and is a significant change from previous State facilities programs. The State funding is provided in the form of per pupil grants, with supplemental grants for site development, site acquisition, and other project specific costs when warranted. This process makes the calculation of the State participation quicker and less complicated. In most cases, the application can be reviewed, the appropriate grants calculated, and State Allocation Board (SAB) approval received in 60–90 days regardless of project size.

In addition to a less complicated application process, the SFP provides greater independence and flexibility to school districts to determine the scope of new construction or modernization projects. There is considerably less project oversight by State agencies than in previous State programs. In return, the program requires the school district to accept more responsibility for the outcome of the project, while allowing the district to receive the rewards of a well managed project. All State grants are considered to be the full and final apportionment by the SAB. Cost overruns, legal disputes, and other unanticipated costs are the responsibility of the district. On the other hand, all savings resulting from the district's efficient management of the project accrue to the district alone. Interest earned on the funds, both State and local, also belongs to the district. Savings and interest may be used by the district for any other capital outlay project in the district. See Section 13, "Additional SFP Requirements and Features" for more information on project savings.

The SFP provides funding grants for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. The two major funding types available are "new construction" and "modernization".[1] The new construction grant provides funding on a 50/50 State and local match basis. The modernization grant provides funding on a 60/40 basis. Districts that are unable to provide some or all of the local match requirement and are able to meet the financial hardship provisions may be eligible for additional State funding (see Section 10, "Financial Hardship").

To ensure that districts are providing adequate safe facilities to students, approval by both the Division of the State Architect (DSA) is required prior to signing a contract for any new construction, modernization and alteration projects for which State funding is requested. Education Code, Section 17072.30, requires that school districts obtain DSA approval of their project's plans and specifications prior to submitting a funding application to the OPSC. The DSA approval ensures that the plans and specifications are in compliance with California's requirements for structural safety, fire and life safety, and accessibility. Districts that sign construction contracts prior to obtaining DSA approval risk their project's eligibility for State funding. The only exception to this requirement is for relocatable buildings, for which districts may enter into a contract to acquire the plans and specifications; however construction cannot commence until DSA approval of the final plans and specifications has been obtained. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval.

[1] Education Code, Sections 17072.10 and 17074.10, establish the new construction grant and modernization grant, respectively.

Implementation and Evolution of the School Facility Program

Senate Bill 50 (Greene) was chaptered into law on August 27, 1998, establishing the SFP. The legislation required that regulations be approved and in place for accepting and processing applications as soon as Proposition 1A was approved by the voters the following November. The SFP continues to evolve through legislative changes. Assembly Bill (AB) 16 and AB 14 provided for significant changes by requiring that regulations be approved and in place for accepting and processing applications as soon as Proposition 47 was approved by the voters in November 2002. These changes included funding for charter school facilities, critically overcrowded schools and joint-use projects. Some of the changes that impacted new construction funding include the suspension of Priority Points, an additional grant for energy efficiency, and several changes that impact the determination of eligibility. Some of the changes that impacted modernization funding include the change of the funding ratio between the State and the school district from 80 percent State and 20 percent district to 60 percent State and 40 percent school district, and additional grants for energy efficiency and the modernization of buildings 50 years old or older.

The passage of Proposition 55 in March 2004 provided an additional $12.3 billion for the construction and renovation of K–12 school facilities and higher education facilities. These funds made available through the School Facility Program, continue to make a difference in assisting school districts with overcrowding and accommodating future enrollment growth.

Proposition 1D provided an additional $7.3 billion in November 2006 which has already begun to assist school districts to repair and modernize older facilities. These funds will additionally assist with overcrowding and accommodate future enrollment growth.

Information on each category of funding can be found in the following sections:

SFP FUNDING CATEGORY	SECTION	PAGE
New Construction	5	23
Modernization	9	29
Financial Hardship	10	71

Funding for the School Facility Program

Helpful Hint:
A listing of school districts that have received SFP funding is available on the OPSC Web site at www.opsc.dgs.ca.gov.

Funding for projects approved in the SFP comes exclusively from statewide general obligation bonds approved by the voters of California. The first funding for the program was from Proposition 1A, approved in November 1998. That bond for $9.2 billion contained $6.7 billion for K–12 public school facilities. The second funding for the program was from Proposition 47, approved in November 2002. It was a $13.2 billion bond, the largest school bond in the history of the State. It contained $11.4 billion for K–12 public school facilities. In March 2004 a third bond was passed by California voters for another $12.3 billion. Of the $12.3 billion provided by Proposition 55, it contained $10 billion for K–12 public school facilities. At this time funds remain for new construction projects.

In November 2006 an additional $10.416 billion was passed by the voters. Of the $10.416 billion provided by Proposition 1D, $7.3 billion will be utilized by school districts to address overcrowding, provide career technical education facilities, accommodate future enrollment growth, renovate and modernize older school buildings and allow participation in community related joint-use projects. The 2006 bond measure is summarized as follows:

PROGRAM	BOND 2006
New Construction *	$ 1,900,000,000 †
Modernization *	3,300,000,000
Overcrowding Relief Grant	1,000,000,000
Joint Use	29,000,000
Career Technical Education Facilities Program	500,000,000
Charter Schools	500,000,000
High Performance Schools	100,000,000
Total K–12	$ 7,329,000,000

* Up to $200 million of the new construction and modernization funds specified for small high schools.

† Up to 10½ percent is available for seismic repairs, reconstruction, or replacement.

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Section 2

The State Allocation Board, the Office of Public School Construction, and Other Involved Agencies

State Allocation Board

Created in 1947 by the State Legislature, the State Allocation Board (SAB) is responsible for determining the allocation of State resources including proceeds from General Obligation Bond Issues and other designated State funds used for the new construction and modernization of public school facilities. The SAB is also charged with the responsibility for the administration of the State Relocatable Classroom Program, the Deferred Maintenance Program, and many other facilities related programs. Handbooks on these programs may be found on the Office of Public School Construction (OPSC) Web site at www.opsc.dgs.ca.gov. Printed copies may be obtained by contacting the OPSC directly.

The SAB meets monthly, typically at the State Capitol. At each meeting the SAB reviews and approves applications for eligibility and funding, acts on appeals, and adopts policies and regulations as they pertain to the programs that the SAB administers.

The SAB is comprised of ten members:

- The Director of the Department of Finance or designee (Traditional SAB Chair)
- The Director of the Department of General Services or designee
- The Superintendent of Public Instruction or designee
- One person appointed by the Governor
- Three State Senators; appointed by the Senate Rules Committee (two from the majority party and one from the minority party)
- Three State Assembly Members; appointed by the Speaker of the Assembly (two from the majority party and one from the minority party)

The current SAB members are:

- Mr. Michael Genest, Director, Department of Finance
- Mr. Will Bush, Director, Department of General Services
- Mr. Jack O'Connell, Superintendent of Public Instruction
- Ms. Rosario Girard, Governor's Appointee
- Senator Bob Margett
- Senator Jack Scott
- Senator Joe Simitian
- Assembly Member Gene Mullin
- Assembly Member Jean Fuller
- Assembly Member Kevin de León

The current SAB officers are:

- Rob Cook, Executive Officer
- Lori Morgan, Deputy Executive Officer
- Vacant, Assistant Executive Officer

SAB Implementation Committee

The SAB Implementation Committee is an informal advisory body established by the OPSC to assist the SAB and the OPSC with policy and legislation implementation. The committee membership is comprised of organizations representing the school facilities community which meets approximately once a month depending upon the workload. Committee membership, as well as the time and location of future meetings, can be found on the OPSC Web site at www.opsc.dgs.ca.gov.

Office of Public School Construction

OPSC Mission:
"As staff to the State Allocation Board, the Office of Public School Construction facilitates the processing of school applications and makes funding available to qualifying school districts. These actions enable school districts to build safe and adequate school facilities for their children in an expeditious and cost-effective manner."

The OPSC serves the 1,000 plus K–12 public school districts in California. As staff to the SAB, the OPSC is responsible for allocating State funding for eligible new construction and modernization projects to provide safe and adequate facilities for California public school children. The OPSC is also responsible for the management of these funds and the expenditures made with them. It is also incumbent on the OPSC to prepare regulations, policies, and procedures for approval by the SAB that carry out the mandates of the law.

OPSC Responsibilities

The OPSC is charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of eligibility or funding which is being requested and to work with school districts to assist them throughout the application process. The OPSC ensures that funds are allocated properly and in accordance with the law and decisions made by the SAB. Since November of 1998, the OPSC has processed over $28.8 billion in State apportionments to the SAB. The programs, funding, and approvals over that period are shown in Appendix 5, "Summary of Bond and Deferred Maintenance Allocations."

The OPSC prepares agendas for the SAB meetings. These agendas keep the SAB members, districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a historical record of all SAB decisions, and is used by school districts, facilities planners, architects, consultants, and others wishing to track the progress of specific projects, the availability of funds, and SAB regulations.

Management of the Office of Public School Construction

Helpful Hint:
The Directory of Services provides information regarding project manager county assignments, including telephone numbers and other contact information.

The OPSC is directed by an Executive Officer who is appointed by the Governor. The appointee also serves as the Executive Officer to the SAB. A Deputy Executive Officer is selected by the Executive Officer subject to the approval of the Director of General Services. The Deputy oversees the daily operation of the office. An Assistant Executive Officer is appointed by the SAB. Although not technically a member of the OPSC management, the Assistant Executive Officer works directly with the OPSC management team and acts as liaison between the SAB and the OPSC.

Other Agencies Involved

School districts planning to construct or modernize existing schools require the assistance of several local, State, and federal agencies. It is essential that those dealing with the school construction process have an understanding of the role each agency plays. The three primary State agencies that will be referred to in this guidebook, in addition to the SAB and the OPSC, are the Division of the State Architect (DSA), the California Department of Education (CDE) School Facilities Planning Division (SFPD), and the Department of Toxic Substances Control (DTSC). District representatives may also come into contact with many other agencies. A listing of some of the agencies that might be involved in a school project and their role is provided in Appendix 2, "Potential State Agency Involvement".

The agency information provided in this section is meant as a tool for school district representatives to become familiar with the primary State agencies involved in the school construction process. The OPSC encourages district representatives to contact each agency to obtain more information about their procedures and processes. To contact the agencies listed below, please see Appendix 1, "State Agency Contact Information."

Department of General Services, Division of the State Architect

The primary role of the DSA in the school construction process is to review plans and specifications to ensure that they comply with California's building codes, with an emphasis on structural and seismic safety. The review commences when the school district's architect submits working drawings to the DSA. The DSA reviews the working drawings to assure that the proposed structures meet codes and requirements for structure (seismic), fire and life safety, and universal design compliance.

DSA approval of all plans and specifications is required prior to a construction contract being signed for new construction, modernization or alteration of any school building for which a district is seeking State funding. The only exception to this requirement is for relocatable buildings, for which districts may enter into a contract to acquire the plans and specifications; however construction cannot commence until DSA approval has been obtained. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. Please refer to the Education Code, Section 17072.30, for further information.

California Department of Education, School Facilities Planning Division

The role of the SFPD is to review and approve school district sites and construction plans. The SFPD review begins when a school district plans to acquire a new school construction site. Prior to approving a site for school purposes, the SFPD reviews many factors, including, but not limited to, environmental hazards, proximity to airports, freeways, and power transmission lines. The review of construction plans by the SFPD focuses mainly on the educational adequacy of the proposed facility and whether the needs of students and faculty will be met. See Section 3, "Project Development Activities."

Department of Toxic Substances Control

The role of the DTSC in the school construction process begins with the SFPD's site approval process. The DTSC will assist the district with an assessment of any possible contamination, and, if necessary, with the development and implementation of a mitigation plan.

Department of Industrial Relations

The role of DIR in the school construction process is to enforce labor laws relating to contractors and employers.

The Labor Code[1] requires, prior to receiving a SFP fund release, a district to make a certification that a labor compliance program (LCP), that has been approved by the DIR, for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exist:

- The district has a project which received an apportionment from the funding provided in Proposition 47[2] or Proposition 55; and,
- The construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

The DIR provides a guidebook to assist districts in developing a LCP and has model LCPs available for view on its Web site at www.dir.ca.gov. The DIR also provides public works contract information regarding:

- LCP and the Labor Code
- Classification and Scope of Work
- Prevailing Wage Determination and Special Determination for a Specific Project
- Verification of the Status of an Individual Apprentice or an Apprenticeship Program

Questions regarding these matters and LCP approval may be directed to DIR at 415.703.4810.

[1] Refer to Labor Code, Section 1771.7

[2] Kindergarten-University Public Education Facilities Bond Act of 2002

Section 3

Project Development Activities

Introduction

The School Facility Program (SFP) provides funding to projects that are essentially through the design phase and are ready to begin construction. With the exception of certain advanced planning and site applications for financial or environmental hardship situations, applications for funding require plans approved by the Division of the State Architect (DSA) and by the California Department of Education (CDE). Applications for new construction funding may also require CDE approval of the project site. In most cases, a great deal of time, money, and effort has already been expended before the project ever reaches the Office of Public School Construction (OPSC). Most of the tasks involved in this section are not a part of the SFP and are not under the jurisdiction of the State Allocation Board (SAB). However, it is important that the district representative is aware of the options and requirements that may affect the district's project.

Establishing Eligibility

One of the first steps a district should consider in the school construction process is establishing eligibility for SFP funding on either a district-wide or high school attendance area basis. This will provide the district with the information needed to determine the possibility and scope of State funding assistance, the types of facilities needed, and the appropriate project site size. See Section 4, "Application for Eligibility" for more information about establishing eligibility.

Selecting Professional Services

The SFP grants include funding for many professional services related to the development of the school project. Some of the most obvious and commonly used services are provided by architects, civil and structural engineers, and construction managers. Under law, these professional services are different than the services provided by general contractors, painters, site grading subcontractors, and similar construction related work. Unlike construction contracts, professional service contracts are obtained through a qualifications-based selection process rather than a competitive bid process.

Because the design professional or other service provider will be engaged long before the application for project funding is submitted to the OPSC, it is critical district representatives are aware that professional services used on projects funded through the SFP must be obtained by a competitive selection process. Failure to do so can jeopardize the project funding.

The Competitive Selection Process

The SFP requires that applicant districts certify that contracts for the services of any architect, structural engineer, or other design professional that were entered into on or after November 4, 1998 for work on the

project were obtained through a competitive process. The term competitive does not mean that the selection has been bid, but rather that a formal qualifications-based selection process has occurred that resulted in the professional services contract.[1]

Neither the SAB nor the OPSC is qualified to interpret the Government Code requirements pertaining to the selection of professional services. The district is advised to seek legal counsel assistance to ensure that the process used fully complies with this requirement as well as other legal requirements[2] such as Disabled Veterans Business Enterprise requirements, and the Public Contract Code.

Eventually, the district will be required to certify that professional design services on the project were selected using a competitive process. This certification is made on the *Application for Funding* (Form SAB 50-04).

Compliance

The competitive selection requirement applies to a new construction or modernization project if:

- » it is funded under the SFP, and
- » professional services of an architect, structural engineer, or other design professional were used to complete the work in the project, and
- » contracts for those services were signed on or after November 4, 1998.

Compliance with this requirement is very important. The law specifically mandates that the SAB shall not apportion funds to a district unless the competitive process for professional services has been used. If, during an audit at the project completion, it is determined that the competitive process was not used, the entire project grant could be found to have been attained illegally.

Districts that are unfamiliar with the process of hiring an architect should be aware that the American Institute of Architects (AIA) California Council has sample contracts available to assist districts. For more information, please contact the AIA at 916.448.9082.

Project Responsibilities

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the district as owner. Frequently, however, the district may not be aware of the difference between the types of responsibilities, or even of the need to assign responsibilities and tasks related to the project. This lack of clarity may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

As a result of this situation, a small working group was formed by the Joint Committee on School Facilities to address the issue. The Services Matrix is the result of the group's discussions (see Appendix 4, "Services Matrix"). District representatives may wish to consult the matrix to determine the responsibilities assigned to a project and to avoid duplication of effort.

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[1] Section 11, commencing with Section 4525 of Division 5 of Title 1 of the Goverment Code.

[2] CEQA and Planning per Public Resources Code, Section 21151.2.

Cost Reduction

Helpful Hint:
The SAB publication on cost reduction is available on the OPSC Web site.

The SAB has developed cost reduction guidelines to assist school districts in reducing project construction costs. In April 2000, the SAB made available the *Public School Construction Cost Reduction Guidelines*. The guidelines are a compilation of hundreds of ideas introduced and discussed at a series of statewide meetings. The input into these guidelines comes from various sources, such as school district representatives, State agencies, architects, building industry representatives, construction managers, and consultants. The guidelines provide districts with ideas and new methods to contain and reduce costs and to maximize the return on expenditures. Along with cost reduction guidelines, other incentives within the program, such as the retention of savings, exist to promote efficiency in design and construction of school facility projects. (See Section 13, "Additional SFP Requirements and Features" for more information on project savings.) The *Public School Construction Cost Reduction Guidelines* are accessible on the OPSC Web site at www.opsc.dgs.ca.gov.

Design with Flexibility in Mind

The SAB approval is based on the plans and specifications that accompany the *Application for Funding* (Form SAB 50-04) and is full and final. Therefore, it is imperative that the apportionment is used for the scope of work contained in that specific set of plans.

When it comes to classrooms and minimum essential facilities (MEF), meaning libraries, gymnasiums, multi-purpose rooms, and toilets which are necessary and support the traditional classroom environment, there are limited circumstances where a project may deviate from the scope of work outlined in the plans that were included with the application and approved by the SAB (see "Change of Scope," in Section 13, "Additional SFP Requirements and Features," for more information on this topic). Because of this, it is extremely important to structure bids with flexibility so that projects can be modified in the face of positive or negative fluctuations in the bid climate or costs of materials. By including additive and deductive alternates in your plans and specifications, you will be able to handle both situations within the budget provided for your SFP project in a way that is consistent with SAB law and regulation.

Joint-Use Projects

The language in the law which creates the SFP requires that the applicant school district consider the joint use of core facilities. The SAB's *Public School Construction Cost Reduction Guidelines* contains a number of suggestions as to how a district might investigate such joint use possibilities. Grants received under the new construction program may be used to fund school facilities related joint-use projects. Typical joint-use projects include multi-purpose rooms, libraries, gymnasiums, or any other type of facilities that can be used by both the district and the community.

Propositions 55 and 1D provide funding for joint-use projects, specific criteria to access this funding was included in AB16 (Hertzberg) (see Section 8, "Joint-Use Projects" for more information).

Reusable Plans

The SFP requires the SAB to develop recommendations regarding the use of cost-effective, efficient, and reusable facility plans. Many districts have found that reusing some part or all of a school plan previously constructed in the district or in another district can lead to efficiencies in both the time required to prepare construction plans and the cost of constructing the facility. Such plan reuse is not always feasible, and, even when possible, may require considerable redesign work for the new site; however, in many circumstances the advantages can be significant.

To assist districts with exploring the feasibility of plan reuse for their new construction project, the SAB and the OPSC have developed an Internet-based "catalog" of plans that can be searched and browsed by anyone. The link on the OPSC Web site "Prototype School Designs," contains floor plans, renderings, and vital statistics for a number of projects ranging from complete schools to single classrooms and support buildings. Districts are encouraged to download information on any of the projects on the OPSC Web site without charge. Districts may then contact the architects responsible for the original projects to pursue adaptation of the facilities to their individual needs. Arrangements for use of the plans are made by the district with the design professional. Of course, all plans on the OPSC Web site are copyrighted by the designers or firms that submitted them. The SAB and OPSC do not participate in any way, except as a clearinghouse for plans of school facilities.

Project Financing

A district has several different options available to meet its 50 percent funding requirement for new construction and 40 percent funding requirement for modernization projects. Some financing mechanisms the district may consider are:

- General obligation bond funds
- Mello-Roos
- Developer fees
- Proceeds from the sale of surplus property
- Federal grants

Once a district has received a SFP apportionment and is ready for funds to be released on a project, they will need to certify on the *Fund Release Authorization* (Form SAB 50-05) that their contribution to the project has already been expended, is on deposit, or will be expended prior to the notice of completion for the project. (See Section 13, "Additional SFP Requirements and Features" for more information on the fund release process.)

Site Selection

The SFP provides that in addition to the basic grant for a new construction project, the district may also receive up to 50 percent of the cost of site acquisition (see Section 5, "New Construction Funding" or Section 10, "Financial Hardship"). In most cases, the district must have completed the process of identifying the site and must have approval of the site by the CDE prior to applying for site acquisition funding. Some separate site applications for financial or environmental hardships do not need this approval at the time of application. See further discussion under those topics in Section 5, "New Construction Funding". The identification and approval process falls under the jurisdiction and responsibility of agencies other than the SAB and the OPSC, and is therefore outside the scope of this guidebook. However, because the processes required can be a major factor in a timely application submittal for project funding, district representatives should be aware of some of the basic requirements for site selection as follows:

Identifying a Site

Selecting a site for a new construction project to be funded under the SFP is primarily a local process. The SAB has guidelines and regulations relating only to the funding limits related to site acquisition[1]. The CDE is given the authority in law to develop standards for school site acquisition related to the educational merit and the health and safety issues of the site. The CDE uses these standards to review a site and to determine if the site is an appropriate location for a school facility. The CDE approval is a requirement before the application for funding can be submitted to the OPSC and subsequently to the SAB for funding.

Site Approval

There are many components that make up the review and approval of a proposed school site. The CDE publication, *School Site Selection and Approval Guide*, addresses these components more completely than this guidebook can. Therefore, the district representative considering an application for a site under the SFP should consult the CDE or their publications. Contact information can be found in Appendix 1, "State Agency Contact Information."

[1] SFP Regulations, Sections 1859.74 through 1859.76.

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Section 4

Application for Eligibility

Introduction

The School Facility Program (SFP) provides State funding assistance for two major types of facilities construction projects: new construction and modernization. The process for accessing the State assistance for this funding is divided into two steps: an application for eligibility and an application for funding. Applications for eligibility are approved by the State Allocation Board (SAB) and this approval establishes that a school district or county office of education meets the criteria under law to receive assistance for new construction or modernization. Eligibility applications do not result in State funding. In order to receive the funding for an eligible project, the district representative must file a funding application with the Office of Public School Construction (OPSC) for approval by the SAB. See Section 5, "New Construction Funding" and Section 9, "Modernization Funding" for information on submitting applications for funding.

Helpful Hint:
Applications for eligibility may be filed in advance of applications for funding.

Applications for eligibility may be filed in advance of an application for funding, or the eligibility and funding requests may be filed concurrently at the preference of the district. In either case, an application for eligibility is the first step toward funding assistance through the SFP. The process must be done only once. Thereafter, the district need only update the eligibility information if additional new construction and modernization funding applications are submitted.

After the application for eligibility is reviewed by the OPSC, it is presented to the SAB for approval. The SAB's action establishes that the district has met the criteria set forth in law and regulation to receive State funding assistance for the construction of new facilities or the modernization of existing facilities. Throughout this section, references to the district also include a county office of education unless otherwise noted.

The discussions in this section are intended to describe the basic processes a district will encounter and use for establishing eligibility. Every possible situation cannot be dealt with in this overview. When preparing an application, the district representative should always contact the OPSC project manager to be sure that the district's approach is correct and will result in the most eligibility possible for State assistance. To learn more about the SFP, visit the OPSC Web site at www.opsc.dgs.ca.gov.

New Construction Eligibility

The underlying concept behind eligibility for new construction is straightforward. A district must demonstrate that existing seating capacity is insufficient to house the pupils existing and anticipated in the district using a five-year projection of enrollment. Once the new construction eligibility is determined, a "baseline" is created that remains in place as the basis of all future applications. The baseline is adjusted for changes in enrollment and for facilities added, and may be adjusted for other factors such as errors and omissions or amendments to the SFP Regulations. For a complete list of adjustments, refer to SFP Regulations, Section 1859.51. Except for these updates, the establishment of the eligibility baseline is a one-time process.

Establishing Eligibility on a District-Wide or High School Attendance Area Basis

Districts generally establish eligibility for new construction funding on a district-wide basis. For most districts this is the most beneficial method, and the vast majority of applications are filed in this manner. However, under certain circumstances, the district may have more eligibility if the applications are made on a High School Attendance Area (HSAA) basis using one or several attendance areas. This circumstance occurs when the building capacity in one HSAA prevents another from receiving maximum eligibility. For example, one attendance area may have surplus classroom capacity while another does not have the needed seats to meet the current and projected student enrollment. If the district were to file on a district-wide basis, there might be little or no overall eligibility, even though the students in one attendance are "unhoused" by the definitions established in the SFP. In this case, by filing on a HSAA, the eligibility would increase to allow construction of adequate facilities for the unhoused students.

The district may file using one high school attendance area, or at the district's option, it may combine two or more adjacent HSAAs, commonly called a "Super Attendance Area." In either case, the attendance areas must serve an existing, operating high school, and the district must demonstrate that at least one HSAA has negative eligibility at any grade level. Continuation or proposed high schools may not be used for this purpose. Once a district receives funding using a high school attendance area as the basis of its eligibility, it must continue to file future new construction applications on that basis for five years.

Eligibility Process

The SAB has adopted three forms to assist districts in collecting the information needed to establish eligibility. The following table outlines the three-step process a district uses to establish new construction eligibility:

Process for Establishing New Construction Eligibility

STEP	DOCUMENTATION	PURPOSE
1	Enrollment Certification/Projection Form SAB 50-01	Used to collect information about the district's current and historical enrollment and to project that data five years into the future.
2	Existing School Building Capacity Form SAB 50-02	Used to record all the teaching stations in the district that are adequate to house students.
3	Eligibility Determination Form SAB 50-03	Used to compare the information from the first two forms and to determine if the district is eligible for new construction or modernization grants.

The forms referred to in the table can be downloaded from the OPSC Web site at www.opsc.dgs.ca.gov in a format that allows them to be printed as blank forms or completed on the computer and printed for submission to the OPSC. An Excel spreadsheet titled *SAB 50-01, 02, 03 Combined Excel Worksheets* is also available on the OPSC Web site that will perform all the required calculations.

Step One—Enrollment Projections

It may take several years to take a new construction project from the initial determination of need to final completion of construction and occupancy. Because of this, the SFP provides a *projection* of enrollment five years into the future to determine eligibility for funding. The *Enrollment Certification/Projection* (Form SAB 50-01) is used to make this projection. This form assists the district with determining future needs, planning, arranging State and local funding, and constructing the project before the children to be served arrive. The method of projecting enrollment into the future involves using current and historical California Basic Educational Data System (CBEDS) enrollment data for the district. The data collected is then projected into the future for five years using a method known as a Cohort Survival Projection. A district can obtain CBEDS data from the California Department of Education (CDE).

A district may file on a HSAA basis utilizing one or more HSAA. If the district chooses to file an application on this basis the current and three previous years enrollment data in the HSAA or HSAAs (see section on High School Attendance Areas in this section) will need to be included on the Form SAB 50-01.

Once the district enters the required current and historical enrollment figures, the projection is done automatically on the Excel version of this form.

Supplemental Enrollment Figures. A district may supplement the cohort survival enrollment projection by the number of un-housed pupils that are anticipated as a result of dwelling units proposed to be built in the district or HSAA pursuant to approved and valid tentative subdivision maps. Essentially, districts that are experiencing unusual residential growth can factor in these additional students into the enrollment projection.

Helpful Hints:

- Make sure the maps being used are tentative tract maps, final maps or parcel maps (parcel maps can be used only for either apartment or condominium projects).
- Work closely with your local planning commission to ensure the maps are approved and valid.
- When reporting dwelling units on the Form SAB 50-01, be sure to reduce the number of proposed dwelling units by the number of homes that have been occupied or have had construction permits pulled that are twelve months or older from the date the permit was pulled.
- Use the dwelling unit spreadsheet provided on the OPSC Web site to ensure timely processing of the district's application.
- If you are unsure if you can include a tract map, or you have other evidence of approval not previously mentioned, please contact your Project Manager.

What is an Approved and Valid Tentative Subdivision Map? California State law provides a framework by which city or county planning authorities process residential development projects. Typically, this process begins at the Specific Map stage, then proceeds to the Tentative Tract Map stage and concludes at the Final Map stage. The OPSC recognizes that each city or county planning authority process may not entirely follow this process. However, State law requires a tentative subdivision map be approved and valid at the time of submittal for the purposes of augmenting the enrollment projection. The SAB and the OPSC will permit the use of the following maps to augment enrollment projections:

- » Tentative Tract Map
- » Final Map
- » Parcel Map—only when the construction involves an apartment complex or condominium building.
- » Other tract maps will be reviewed on a case-by-case basis.

Submittal Requirements. In order for districts to account for the additional students that will reside in new subdivisions represented by the maps listed above, a district will need to submit a Form SAB 50-01 and report the number of dwelling units to be constructed in the approved proposed subdivision. Additionally, the district must provide the approval dates of the maps by the local planning commission or approval authority; the number of dwelling units to be built in the subdivision; and one of the following:

- » an acceptable map with the local planning commission or approval authority stamp approving the map; or,
- » an acceptable map with the appropriate supporting documentation; or,
- » a spreadsheet listing all of the subdivisions reported on the Form SAB 50-01 with the appropriate supporting documentation.

When submitting supporting documentation it must include one of the following:

- » local planning commission or approval authority meeting minutes detailing the approval of the map; or,
- » a letter from the local planning commission or approval authority indicating that the tract map is approved and valid at the time of the submittal; or,
- » any other reasonable documentation from the local planning commission or approval authority that indicates the tract map is approved and valid.

The OPSC recognizes that local processes vary from county to county, thus the information provided from each planning authority varies. Districts still need to be aware that by signing the Form SAB 50-01, the district representative is certifying that the information provided meets the criteria set forth by law and regulation. If there is any confusion about the information provided by the planning authority, districts are encouraged to work with their project manager.

A yield factor from the various types of housing in the subdivision may be used to supplement the enrollment projection. As an alternative, the district may accept a state-wide average yield factor for calculation purposes. This factor is specified in the instructions on the Form SAB 50-01. Should the district wish to

use its own student yield factors, a copy of the district's study that justifies the student yield factors must be submitted with the Form SAB 50-01. The district's study should determine the elementary, middle and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This study should be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed in which the school district is located.

A supplement to the enrollment projection for proposed housing units is not available for county superintendent applications.

Small districts with current enrollment of less than 300 should be aware that they have an option for reporting their enrollment differently if it has decreased by more than 50 percent from the previous year enrollment. (For more information on using this option please refer to the Form SAB 50-01, Part A.)

Step Two—Existing School Building Capacity

The second part in determining the district's eligibility for new construction assistance is to document the capacity of the school district at the time the first application for eligibility is filed under the SFP. This capacity calculation is done only once. Districts may file capacity information on a district-wide basis or using a HSAA.

The Calculation of Capacity. The *Existing School Building Capacity* (Form SAB 50-02) is used to capture the information needed for the calculations, and the accompanying instructions give a detailed guide of how to complete the form. The Form SAB 50-02 is essentially a record of all the district's facilities. The SFP Regulations provide instructions on what spaces are to be included or excluded in the calculation of the district capacity.[1] It is important to understand that any project funded with local sources must be counted as existing capacity if the contract for construction of the project is signed before the original application for eligibility determination is made. There is an exception provided for projects if the contracts were signed between August 27, 1998 and November 18, 1998, and if the project did not have eligibility under the Lease-Purchase Program (LPP).

The process of calculating the districts' existing school building capacity is as follows:

1. The district completes a gross inventory of all spaces constructed or reconstructed to serve as an area to provide pupil instruction. The grade level of each classroom is also identified.
2. The gross inventory is adjusted by excluding certain spaces that are not considered available teaching stations under law or regulation. The classrooms remaining in the inventory are multiplied by a loading factor of 25 for elementary, 27 for middle and high school, 13 for non-severe, and 9 for severe classrooms to determine the pupil capacity.
3. A final calculation is done to increase the capacity by a specified amount if the district does not have a substantial number of students enrolled in multi-track year-round education. High school districts are not subject to this adjustment. The district may request a waiver from this adjustment from the CDE, School Facilities Planning Division.
4. A last adjustment occurs for those districts that receive Multi-Track Year-Round Education Operational Grants from the CDE. This increases the district capacity and reduces the final eligibility for the district in a number equivalent to the operational grants the district has most recently received from the CDE.

On-Site Reviews. The district must submit records of the teaching stations existing in the district or HSAA as part of the inventory process. These records generally consist of the following:

[1] SFP Regulations, Section 1859.30, "Gross Classroom Inventory."

» Diagrams of the facilities at each site in the district. These diagrams need not be highly detailed, but must include all permanent and relocatable classrooms at the site. Many districts use simple "fire-drill" maps for this purpose. The diagrams must be submitted with the application.
» Documentation supporting any exclusion claimed from the gross inventory. For instance, if the district claims that a portable is excluded because it has been leased for less than five years, a copy of the lease must be in the district's possession as supporting documentation.

Helpful Hints:
All of the OPSC worksheets are available on the OPSC Web site.

The district may wish to use an OPSC Site Analysis Worksheet to assist with recording all the classrooms in the gross inventory as well as recording the reasons for exclusions, if any. This document is not mandatory but may make the inventory process easier. It also streamlines the OPSC review of the eligibility application.

Step Three—Determining Eligibility

The last part in the new construction eligibility determination process is done on the *Eligibility Determination* (Form SAB 50-03). The existing school building capacity calculated in step two is subtracted from the enrollment projection determined in step one. The number of pupils left, if any, are considered "unhoused" for the purposes of the SFP. They represent the district's eligibility for new construction grant entitlement.

Eligibility Application Approval. Once the district has completed steps one through three, they are ready to submit the eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete prior to adding the application to the workload list. A more detailed review will be completed prior to presentation to the SAB that may include an on-site visit to review the information included in the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

Alternative Enrollment Projection—AB 491, Chapter 710, Statutes of 2005 (Goldberg)

The most recent amendment to the SFP Regulations includes a provision for Alternative Enrollment Projections that can be used to supplement regular new construction eligibility determined by the Cohort Survival Projection. At the January 2006 meeting, the SAB approved the regulatory amendments and directed the OPSC to request approval of regulations from the Office of Administrative Law on an emergency basis.

This additional provision is available for school districts with two or more school sites each with a pupil population density greater than 115 pupils per acre for K–6 pupils and 90 pupils per acre for 7–12 grade pupils based on the 2004–05 school year enrollment. In addition, an applicant school district must demonstrate that it cannot meet its housing needs at the impacted school sites, after considering all existing eligibility mechanisms available from the Cohort Survival Projection.

School districts that meet the above criteria may submit a request for review of the Alternative Enrollment Projection method to the OPSC. Districts should conduct the projection in a way that best represents growth patterns of each district, and can use various data including, but not limited to, birth rates and census data. The request must include the minimum components described in SFP Regulations, Section 1859.40(b). Due to the complexity of the data that may be submitted, the law requires the Demographic Research Unit (DRU) of the Department of Finance to jointly review the Alternative Enrollment Projection methodologies with the OPSC.

Once the OPSC and the DRU approve the Alternative Enrollment Projection method, the OPSC will calculate the additional eligibility available to the district. Additional eligibility will be the difference between the Alternative Enrollment Projection and the cohort eligibility for the same enrollment reporting period, adjusted by the existing pupil capacity in excess of the projected enrollment according to the Cohort Survival Projection. In other words, alternative enrollment projection must offset any negative new construction eligibility determined under the "regular" method.

Once additional eligibility is determined, the district can utilize this eligibility on new construction projects that will relieve overcrowding, including but not limited to, the elimination of use of Concept 6 calendars, four track year-round calendars, or bussing in excess of 40 minutes. School districts may file new construction funding applications that utilize "regular" new construction eligibility as well as eligibility gained from the Alternative Enrollment Projection. The law provides up to $500 million from the remaining Proposition 55 new construction bond funds for projects that utilize Alternative Enrollment Projection eligibility.

Modernization Eligibility

Establishing eligibility for modernization in the SFP is more simplified than new construction. Applications are submitted on a site by site basis, rather than district-wide or HSAA, as is the case for new construction. To be eligible, a permanent building must be at least 25 years old and a relocatable building must be at least 20 years old. For purposes of determining the age of the building, the 20 year and the 25 year period shall begin 12 months after the plans for the building were approved by the Division of State Architect. In either case, the facility must not have been previously modernized with State funding. The district must also show that there are pupils assigned to the site who will use the facilities to be modernized. If the facility is currently unused, such as a closed school, it may also be eligible for modernization funding if the district intends to reopen it and assign students immediately.

Application Process

The SAB has adopted a single form to calculate modernization eligibility, the Form SAB 50-03. This is the same form used for new construction applications. It may be downloaded from the OPSC Web site in a format that allows it to be printed as a blank form or completed on a computer and printed for submission to the OPSC. In order to complete the Form SAB 50-03, the district representative will need a completed site diagram for the applicable school which contains the following information:

- The number of permanent classrooms.
- The number of portable classrooms.
- The ages of all permanent and portable classrooms.
- The grade level of each classroom, i.e., K–6, 7–8, 9–12, non-severe, or severe.
- The square footage for each enclosed facility on the site may be necessary (see paragraph below and the instructions on the Form SAB 50-03 for more information).

The instructions on the Form SAB 50-03 will guide the district through the process of calculating the eligibility at that site for modernization. If all the buildings are over 25/20 years old for permanent/relocatable buildings respectively and eligible for modernization, the grant eligibility is simply the number of children that are or can be housed at a site, whichever is less. However, for cases where there is a mixture of classrooms that are under and over the modernization age limits, two optional calculation methods are provided. One option is to count those facilities that are over the age requirement and the children that can be housed in them. The second option is to develop a ratio based on either the square footage or the number of classrooms by comparing the square footage of overage to underage buildings or the number of

overage to underage classrooms on the site. The ratio is then applied to the number of children enrolled at the site. If the district selects the option using a ratio of square footage, it will be necessary to provide the square footage information on the site diagrams as well.

Helpful Hints:
Did you know that the OPSC provides the current workload list on its Web site?

Eligibility Application Approval

Once the district has completed part three of the Form SAB 50-03, they are ready to submit the modernization eligibility application package. The OPSC will conduct a preliminary review of the package to ensure that it is complete before adding it to the workload list. A more detailed review will then be completed that may include an on-site visit to review the information included on the site diagrams. When the review is complete and the OPSC has validated the eligibility calculations, an item is presented to the SAB for consideration of approval.

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

Districts should review the SFP Application Submittal Requirements worksheet, located on the OPSC Web site, to ensure all required information is included with their application.

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Section 5
New Construction Funding

Introduction

After a district has established eligibility for a project as described in Section 4, the district may request funding for the design and construction of the facility. In most circumstances, the funding is approved after the district has acquired or identified a site for the project and after the plans for construction are approved by the Division of the State Architect (DSA) and the California Department of Education (CDE). The request for funding must be submitted prior to occupancy of any classroom in the construction contract for the project.

The funding for new construction projects is provided in the form of grants. The grants are made up of a new construction grant (pupil grant) and a number of supplemental grants. A brief description follows:

New Construction Grant. The new construction grant is intended to fund design, construction, testing, inspection, furniture and equipment, and other costs closely related to the actual construction of the school buildings. This amount is specified in law based on the grade level of the pupils served.

Supplemental Grants. Supplemental grants are special grants intended to recognize unique types of projects, geographic locations, and special project needs. These grants are based on formulas set forth in the School Facility Program (SFP) Regulations. There are many possible supplemental grants. All of them are discussed later in this section. Two of the most common are:

- Site Acquisition Grant—Funding for site purchase, relocation, escrow, and certain other site acquisition related costs.
- Site Development Grant—The cost related to preparing a site for construction, including grading and drainage. This grant also includes funding for certain off-site development items such as sidewalks, curbs and gutters, streets, and related improvements. General site work, such as onsite driveways, curbs and gutters, and parking are also allowable for new school projects and additions to existing school sites when additional acreage is acquired.

Each new construction project is reviewed and appropriate grants are applied by the Office of Public School Construction (OPSC). All new construction grants are matched equally by the district with local funding sources. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship assistance. A district that intends to request financial hardship assistance, must obtain financial hardship status prior to submitting an application for funding. See Section 10, "Financial Hardship" for more information on this subject. Once the grants are determined for a project, a request is sent to the State Allocation Board (SAB) for a funding apportionment. After the apportionment is approved, the district may enter into a contract for the construction of the facility, if it has not already done so, and receive a release of the funds. To be eligible for funding, the new construction funding application must be submitted to the OPSC within 180 days of the district entering into a contract for construction of the facility.

In some cases, when a district has been approved for financial hardship assistance, the district may request a separate site or design apportionment. In this situation, the request may be made before plans are completed and approved by the DSA. Site and design funding is discussed later in this section. In addition, see Section 10, "Financial Hardship" for more information.

This section explains the funding application process, typical requirements, and how to determine the new construction grant amount. It is important to understand that the discussion in this section focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the OPSC project manager and discuss the district's plan in detail.

Available New Construction Funding

There are several types of funding requests that can be made under the new construction program. The district may request site and design apportionment separately when they meet Financial Hardship requirement or as a combined application when appropriate.

New Construction Adjusted Grant

A new construction adjusted grant is intended to provide the State's full share for all necessary project costs including the New Construction Grant (pupil grants), site acquisition, site utilities, off-site, and service site development. The new construction adjusted grant also includes applicable supplemental grants and adjustments as described later in this section. This grant is approved only after the site has been approved and the plans are also complete and fully approved.

Separate Design

Districts that qualify for financial hardship status may receive a separate apportionment for design costs. Design funding is intended to allow a district to hire an architect and prepare project plans for DSA approval. When the plans are complete and approved, the district may request the remaining new construction funding. The new construction adjusted grant will be reduced by the design apportionment previously made for the project.

Separate Site

Districts that qualify for financial hardship status may receive a separate apportionment for site acquisition. The site funding is intended to allow a district to acquire a site for the project. When the district is ready to request the remaining new construction funding, the new construction adjusted grant will be reduced by the site apportionment previously made for the project.

Separate Site—Environmental Hardship

If the Department of Toxic Substances Control (DTSC) certifies by letter that the time necessary to complete the remediation or removal of hazardous waste on the site to be acquired will exceed 180 days, the district may qualify as an environmental hardship. This means that the district is eligible for a separate apportionment for site acquisition, even though the district does not qualify as a financial hardship. More information is available in the SAB regulations and through the OPSC project manager.

Funding Process

After the district submits an eligibility application (see Section 4, "Application for Eligibility") the process of applying for funding is as follows:

- » the district submits a funding application package;
- » the OPSC reviews the package;
- » the SAB approves the apportionment;
- » the district requests a fund release and makes expenditures;
- » the district submits reports on expenditures;
- » the OPSC audits.

The application for new construction funding is made on a single form, the *Application for Funding* (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of the law and the SFP Regulations. The district may submit the Form SAB 50-04 after the district has received approval by the CDE and the DSA of the proposed new construction project and the project site when applicable. In most cases, the district has determined its eligibility for new construction grants on the *Eligibility Determination* (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility package with the funding package.

The funding application is reviewed by the OPSC for completeness and placed on a statewide workload list in date received order. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. The applications for funding are then processed in date order for presentation to the SAB for consideration of an apportionment.

In some cases, the OPSC may find that an application lacks required information. The district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed, and the district may resubmit the application at any time once the needed information is available.

When the SAB has no funds to apportion, the SAB will continue to accept and process applications based on the date the application is ready for apportionment. The applications will be placed on an unfunded list. An application for funding that is placed on an unfunded list is eligible for apportionment pending the availability of future funding. If the application is approved for a separate site apportionment for Environmental Hardship, the project will receive a date on the unfunded list based on the date the environmental hardship site apportionment was made for the project.

Preparing an Application

A complete application package is an essential element of the process of receiving funding for the district's projects. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application for a new construction adjusted grant. Note that the same information is not necessary for all application types.

The complete application for new construction funding must be accepted by the OPSC prior to occupancy of any classroom in the construction contract for the project in order to be eligible for funding.

New construction and modernization funding applications require the Form SAB 50-04 and must be based on a previous eligibility approval or must have the eligibility application as a part of the package (see Sec-

tion 4, "Application for Eligibility"). Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Section 10, "Financial Hardship" for further information). The table below delineates the supporting documents necessary for each type of new construction funding request.

New Construction Funding Required Documents

DOCUMENT	TYPE OF FUNDING			
	DESIGN ONLY	SITE ONLY	SITE AND DESIGN	CONSTRUCTION
Appraisal of property to be acquired when appropriate* (preliminary appraisal of property for separate site)		✖	✖	✖
Escrow closing statement or court order				✖
CDE approval of site* (contingent CDE approval of site for separate site)		✖	✖	✖
Final DSA plan approval				✖
CDE approval of plans				✖
Cost estimate for site development†				✖
Plan‡ and cost estimate for off-site development when funding is requested				✖

* If this document has been submitted previously, it need not be resubmitted.

† SFP Regulations, Section 1859.76, "Additional Grant for Site Development Costs."

‡ Plan must be approved by the local entity, see *Architectural Submittal Guidelines* for further information.

Helpful Hint:
When a district seeks SFP funding, the law stipulates that a district must hold title or an acceptable lease to all property acquired, constructed, or improved.

Application for Funding (Form SAB 50-04)

The Form SAB 50-04 serves as a vehicle for districts to request funding for design, site and/or construction for all new construction projects. The form provides the OPSC with specific project information to determine the new construction adjusted grant including, but not limited to the type of application; the grade level of the project; the number of pupils the project will house; whether or not a site is being acquired; and if any additional or supplemental grants are being requested. To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information:

Appraisal, Escrow Closing Statement, CDE Site Approval

An appraisal, escrow closing statement or court order, and CDE site approval letter are required if the application includes site purchase. If not, only the CDE approval letter may be required. The documents are described in detail under the heading "Site Acquisition" in the section titled "Supplemental Grants".

DSA-Approved Plans and Specifications

All new construction plans and specifications must be approved by the DSA. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. In addition, all final plans and specifications for new construction, modernization, or alteration of any school building for which the district is seeking State funding requires DSA approval prior to signing a construction contract. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. If a

district enters into a contract for construction prior to receiving DSA approval of the plans and specifications, the project may not be eligible for State funding. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. For more information, please refer to Education Code, Section 17072.30.

- » As of October 2005, all funding applications must be accomplanied by the DSA Final Plan Approval Letter.
- » Plans should include all work eligible for funding through SFP and should be approved by DSA. If plans are submitted in AutoCAD format, a copy of DSA approval letter is required.
- » Plans to be submitted include those for Site, Civil, City/County Street Development, Architectural (along with portable facilities), Structural, Electrical, Plumbing, Mechanical, and Landscape.
- » New plans will not be accepted during the review process once OPSC acknowledged the School District Project Application as a complete package.

Cost Estimate for Site Development

A detailed cost estimate is required if the district is requesting additional grants for site development in its new construction funding application. For more information, please refer to the heading "Site Development" in the section titled "Supplemental Grants", discussed later in this section.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- » The district has established a "Restricted Maintenance Account" (see Section 13, "Additional SFP Requirements and Features" for more information).
- » Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Section 3, "Project Development Activities").
- » The district will fund their share of the project.
- » If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code, Section 8070, and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code, Sections 51224, 51225.3(b) and 52336.1.
- » All large new construction funding applications for comprehensive high schools must be accompanied by evidence of compliance with Education Code, Section 17070.95. Documentation may include any of the following:
  - *Minutes from a public meeting by the school district's governing board documenting the discussion with and the recommendations of the local CTEAC regarding the CTE facility needs assessment.*
  - *Minutes from the meeting with the local CTEAC regarding the CTE facility needs assessment and recommendations.*
  - *Letter from the local CTEAC to the school district that identifies the subject of the discussion, the CTE facility needs assessment, and recommendations.*
- » If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulations, Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- » The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code, Section 1771.7, if the project is funded from Proposition 47 or 55 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.
- » Beginning with the 2005/2006 fiscal year, the district has complied with Education Code, Section 17070.75(e), by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair (see Section 13, "Additional SFP Requirements and Features" for more information).

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

» The date that the DSA approved the plans and specifications.
» That the cost estimate as submitted to the DSA for the work in the plans and specifications is at least 60 percent of the total grant provided by the total State and district matching share excluding any site acquisition costs provided.

CDE Approval of Final Plans

The plans submitted to the OPSC must have the approval of the CDE. The final plan approval letter from CDE must accompany the funding application.

New Construction Grant Amounts

The SFP was designed as a per-pupil grant program where each pupil, depending on the grade level, would receive a specific dollar amount. The new construction adjusted grant, at minimum, will consist of the new construction grant, which is prescribed in law relative to the grade level of the pupils. The grant can be increased by certain supplemental grants for which the district may be eligible. The following are the types of grants:

» New Construction Grant (pupil grants)
» Supplemental Grants

New Construction Grant

The new construction grant is intended to provide the State's share for necessary project costs including, but not limited to, funding for design, costs related to the approval of the plans and specifications by all required agencies, the construction of the buildings, general site development, educational technology, unconventional energy, change orders, tests, inspections, and furniture and equipment. The new construction grant does not provide for site acquisition, site utilities, off-site, and service site development as these costs vary due to location, size, topography, etc. The OPSC will review and determine these costs on a case-by-case basis, as discussed later in this section.

The new construction grant is based on the number of pupils in the project. There are a number of ways that the district can determine how many pupils will be assigned to a project, and therefore what the new construction grant will be. The most obvious way is by first determining the grade level of the project and then the number of classrooms to be included. Under the SFP, K–6 classrooms are loaded with 25 pupils, 7–12 classrooms are loaded with 27 pupils, severe classrooms are loaded with 9 pupils, and non-severe classrooms are loaded with 13 pupils. Assuming that the district has enough eligibility, it might decide to construct a ten-classroom addition along with bathrooms and other support facilities at an existing elementary school. The ten classrooms will house 250 children using the loading standards specified in the program. If the district has already established eligibility for at least that number of elementary students using the Form SAB 50-03, the district could request 250 grants for the project.

There may be a situation where the district may wish to ask for less grants than the classroom capacity of the project. For instance, the project described in the previous paragraph may be of relocatable construction and may be estimated to cost less than the amount of grants that would be generated by 250 students. The district may elect either of the following strategies:

» The district may reduce the grant request to fewer grants, yet still enough to completely fund the State share of the project. The advantage is that the district will retain the unused grants for a future project, perhaps at another site.
» The district may ask for all 250 grants, and use the grant amount not only to construct classrooms at the site, but also to construct other facility needs of the district at the site, such as administration, multi-purpose rooms, gymnasium, etc.
» The district may ask for all 250 grants, and use the savings from the project for other capital facilities projects in the district, provided the project is not receiving financial hardship assistance. The advantage to the district is that the project is built as planned, while other facilities needs are also met within the State funding for the original project. In this case, the district must ensure that the amount spent on the work in the plans and specifications for the original project equals at least 60 percent of the total State and local share of the project grants excluding any site acquisition costs provided. With this condition met, the district may use the savings on other district projects.

There are many variations on these approaches to determining grant amounts for a particular project. It is important that the district consult with the OPSC project manager to be sure that a specific approach is possible and within the guidelines of the law and regulations.

New Construction Grant Calculation

The new construction grant is determined by multiplying the pupils assigned to the project by the pupil grant established in law. The new construction grant is adjusted by the SAB annually (each January) based on the change in the Class B Construction Cost Index. The current amounts are as follows:

New Construction Basic Grant Amount

CLASSIFICATION	BASIC GRANT AMOUNT	COMMENTS
Elementary Pupil	$ 8,081	
Middle School Pupil	$ 8,546	Include grade six pupils if part of a 6–8 grade school.
High School Pupil	$10,873	
Special Day Class—Non-Severe	$16,095	
Special Day Class—Severe	$24,066	

The Special Day Class grant allowances are established at a level higher than basic new construction grant allowances as a means to cover building cost items such as enhanced or added electrical and plumbing fixtures, more accessible doors and grab bars, extra sinks, casework, restrooms, changing areas, living skills space and other facilities for students with exceptional needs.

Supplemental Grants

Supplemental grants are intended to recognize unique types of projects, geographic locations and special project needs. These grants are based on formulas set forth in the SFP Regulations. There are many possible supplemental grants as follows:

» Energy Efficiency
» Fire Code Requirements
» Geographic Location
» Labor Compliance Program

» Multi-level Construction
» New School Projects
» Project Assistance
» Replacement with Multi-Story Construction
» Site Acquisition
» Site Development
» Small High School Program
» Small Size Projects
» Special Education—Therapy
» Urban Locations, Impacted Sites, Security Requirements

The following is a brief explanation of the supplemental grants:

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed new construction project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6 of the California Code of Regulations by 15 percent. Current all energy efficiency funds have been exhausted. At the September 2006 SAB the remaining modernization energy funds were re-designated to fund the new construction energy projects.

Fire Code Requirements

The new construction grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

New Construction Grant Increase—Automatic Fire Detection and Alarm System

CLASSIFICATION	GRANT INCREASE	CLASSIFICATION	GRANT INCREASE
Elementary Pupil	$10	Special Day Class—Non-Severe	$30
Middle School Pupil	$14	Special Day Class—Severe	$44
High School Pupil	$23		

The new construction grant will be increased for each pupil in a project that includes an automatic sprinkler system. The current increase is as follows:

New Construction Grant Increase—Automatic Sprinkler System

CLASSIFICATION	GRANT INCREASE	CLASSIFICATION	GRANT INCREASE
Elementary Pupil	$144	Special Day Class—Non-Severe	$305
Middle School Pupil	$172	Special Day Class—Severe	$454
High School Pupil	$177		

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the New Construction Grant.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the new construction grant due to their geographic location.[1]

Labor Compliance Program (LCP)

A labor compliance program, as specified by Labor Code, Section 1771.5, must be initiated and enforced for each project funded wholly or in part from Propositions 47 or 55 funds if the Notice to Proceed was issued on or after April 1, 2003. Additional funding is provided for these projects. The LCP grant is calculated on a sliding scale as follows:

Labor Compliance Program Grant

IF TOTAL PROJECT COST IS...		THEN THE TOTAL LCP COST IS...
AT LEAST	UP TO	
$ 0	$ 1 million	$ 16,000
$ 1 million	$ 2 million	$ 16,000 plus 0.016 multiplied by the amount over $1 million
$ 2 million	$ 3 million	$ 32,000 plus 0.0025 multiplied by the amount over $2 million
$ 3 million	$ 4 million	$ 34,500 plus 0.0015 multiplied by the amount over $3 million
$ 4 million	$ 6 million	$ 36,000 plus 0.0032 multiplied by the amount over $4 million
$ 6 million	$ 8 million	$ 42,400 plus 0.0031 multiplied by the amount over $6 million
$ 8 million	$13 million	$ 48,600 plus 0.0046 multiplied by the amount over $8 million
$13 million	$18 million	$ 71,600 plus 0.0044 multiplied by the amount over $13 million
$18 million	$48 million	$ 93,600 plus 0.0042 multiplied by the amount over $18 million
$48 million	N/A	$219,600 plus 0.004 multiplied by the amount over $48 million

The State's share will be 50 percent of the above result.

Multi-Level Construction

The SFP recognizes that districts face additional costs to construct multi-level school facilities on small sites. A supplemental grant is available for projects in densely populated areas, where site acquisition costs are high and land is scarce, to provide funds to alleviate and mitigate the impact of these small sites. If the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity, the new construction grant can be increased by 12 percent for each pupil housed in a multi-level building that will house pupils in all levels of the building.

[1] SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant."

Site improvements associated with grading the site to a mass graded or construction-ready condition without foundation or paving and proposed utilities stubbed to the site may be included in the appraisal. Other site improvements must be finished before close of escrow or 100 percent covered by a performance bond.

The appraisal date of valuation, or an update, may not predate by more than six months of the district's funding application to the OPSC. An SFP project which had the site funded as a LPP project shall use the value funded under the LPP.

DTSC Costs. Site acquisition costs may include up to 50 percent of the cost for the review, approval and oversight of the Phase One Environmental Site Assessment (POESA) and the Preliminary Endangerment Assessment (PEA). Note that these costs are prior to the actual clean-up costs, if any. Those costs may be included under some circumstances. See the paragraph entitled "Hazardous Waste Removal" below.

Hazardous Waste Removal. Site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be acquired. These costs may include the actual implementation of the response action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed the difference between one and one half times the appraised value of the site as if no contamination existed and the actual cost of the contaminated site.

Relocation Expenses. Reasonable and necessary costs to relocate residential occupants and businesses from the proposed new school site, including purchasing fixtures and equipment, personal property, new machinery and equipment, and the installation of any improvements at the replacement residences or business locations are permitted as site acquisition costs.

Incidental Site and Hazardous Waste Removal for Leased Sites. If the application for funding includes a vacant leased site that was never used for school purposes, the site acquisition costs may be increased by up to one-half of the costs associated with the removal or remediation of hazardous waste on the site to be leased. These costs may include approved relocation expenses, the actual implementation of the Response Action required in the PEA, the cost of the preparation of the Response Action, and the cost for the DTSC review and oversight of the preparation and implementation of the Response Action. The increase in site acquisition may not exceed one and one half times the appraised value of the site determined by an appraisal made or updated no more than six months prior to the date the application was submitted to the OPSC.

Hazardous Waste Removal Required on an Existing School Site. Site acquisition funding may be available for the evaluation and response action in connection with hazardous substances at an existing school site in advance of submittal of the DSA approved plans.

Acquiring Title. Title to all property acquired, constructed, or improved with funds made available under the SFP must be held by the school district to which the SAB grants the funds. The title to the site need not be actually held by the district before funding; however, one of the following must be demonstrated:

- Purchase will be made from one or more private parties, companies, developers, or other entities, as evidenced by an escrow showing the pending transfer of ownership to the district.
- Court orders, especially orders of condemnation through the county court where the proposed new site lies, which include a Final Judgment, Stipulated Judgment and Order of Immediate Possession to allow occupancy, or Order of Prejudgement Possession.
- An escrow for the transfer of property in lieu of other legally required payments or fees due to the district. (Example: Districts sometimes obtain proposed new school site parcels from developers, with all or part of the "purchase" price comprised of the district forbearing from collecting school mitigation fees from the developers.)

New School Projects

Districts that will construct an entirely new school on a site without existing facilities may qualify for a supplemental grant. This grant is intended to provide funds to construct core facilities such as multi-purpose rooms, gymnasiums, libraries, kitchens, etc., for projects that have a minimal amount of classrooms, but not enough to generate a sufficient new construction grant to build these essential facilities. In March 2004, the SAB approved a separate new school allowance to meet the specific facility needs of alternative education schools, which are defined as community day, county community, county community day, and continuation high schools for the purposes of the SFP. The Alternative Education New School Allowance applies to all alternative education schools for which the plans and specifications were accepted by the DSA or after March 24, 2004. Please refer to the OPSC Web site for the current grant amounts.

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of $5,168 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index.

Replacement with Multi-Story Construction

As part of a SFP new construction project, a school district may demolish a single story facility and replace it with a multi-story facility on the same site. In addition to the new construction grant allowance, the SAB will provide a supplemental grant to fund 50 percent of the replacement cost of the single story facility(s) to be replaced provided that the site size is less than 75 percent of the recommended CDE site size, the pupil capacity at the site will be increased, the cost of the demolition and replacement is less than the cost of providing a new facility at a new site to house the increased pupil capacity, and the project has CDE approval.

Site Acquisition

The site acquisition grant can be used to acquire and develop new school sites or, under some circumstances, to reimburse or credit the district for a portion of the site acquisition costs originally borne by the district or in specific circumstances the current appraised value. Eligible costs for site acquisition are:

- Fifty percent of the lesser of the actual cost or the appraised value of the site.
- Fifty percent of the relocation cost.
- Two percent of the value of the site determined above, with a minimum of $25,000.
- Fifty percent of certain costs related to the DTSC review and oversight.
- Hazardous waste removal (within one and one half times the appraised value).

Note that if the district intends to use a site that was acquired in a priority one project under the Lease-Purchase Program (LPP), the OPSC will use the appraised value of the site as established under the LPP for the appraised value of the site under the SFP. The SFP apportionment will be offset by the LPP apportionment. A project that received site acquisition funds under the LPP as a priority two project is not eligible for site acquisition funds under the SFP.

Independent Appraisal Requirement. The district is required to submit one site appraisal with the Form SAB 50-04. A California licensed and duly-qualified appraiser must issue a current appraisal report for the proposed site using the Uniform Standards of Professional Appraisal Practice. The appraisal must be impartial and prepared for the district or its legal counsel.

The site must be appraised as if it were a clean site, safe from all contaminants in accordance with SFP Regulations, Section 1859.74.1, CDE guidelines, and Title 5, California Code of Regulations. The appraisal report must evaluate both the gross and net usable acreage and any severance damages.

Funding on Leased Land. The district may utilize leased sites with governmental agencies for certain specified periods of time. To receive new construction grants for facilities that are or will be located on real property leased by the district, the property must be leased from the federal government for a period of 25 years or another governmental agency for a period of 40 years. If the lease is with a governmental agency other than the federal government, a 30-year lease may be considered if there are no other educationally adequate sites available under a 40-year lease, the cost per year for a 30-year lease is not greater than a 40-year lease, or the district can provide satisfactory evidence to the SAB that a shorter term lease is necessary.

Site Development

In addition to the new construction grant, the SFP provides a supplemental grant for the purpose of developing the site where the project is to be located. Fifty percent of the site development costs are available for both new sites and for existing sites where additional facilities are being constructed with the exception of general site development. Funding for general site is allowable for new school projects and additions to existing sites, however, only when additional acreage is acquired. These development costs fall under four categories:

- Service site development improvements are performed within school property lines and may include eligible site clearance, rough grading, soil compaction, drainage, erosion control and multi-level, single level subterraean or under building parking structures. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- Off-site improvements are located along the perimeter of two sides of the site including street grading and paving, storm drainage lines, curbs, gutters, sidewalks, and street lighting. These improvements are commonly dedicated for public use. If a district is requesting off-site improvements, the local entities having jurisdiction of areas where the off-site development is proposed must approve the related plans and specifications. These approved plans and specifications must be submitted to the OPSC at the time the application for funding is submitted.
- Utility service developments include improvements of water, sewer, gas, electric, and telephone from the closest existing utility connection.
- General site development includes onsite driveways, walks, parking, curbs and gutters, tennis/handball courts, running tracks, baseball, football, and soccer fields, etc. Funding for general site work is limited to $27,840 per usable acre plus a percentage of the base grant including specific additional grants (multi-level, automatic fire detection/alarm system, automatic sprinkler system, and excessive cost hardship grants). Districts receive a 6 percent increase for elementary and middle school projects and a 3.75 percent increase for high school projects.

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP Regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request with the exception of general site development. To assist in gathering the supporting detail, the OPSC has developed a "Site Development Worksheet for Additional Grants" that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Small High School Program

A supplemental grant is available for the construction of small high schools. The Small High School Program is a pilot program that will sunset on January 1, 2008 and is intended to fund small high schools with an enrollment of 500 pupils or less. Any new small high school may not be constructed where it would have otherwise been built due to sparse population in a geographical area and the applicant district must have a minimum of 500 pupil grants of new construction eligibility.

Small high school projects may be constructed on stand alone sites. Additionally, a small high school may be built on a site adjacent to an existing school, on the site of a large high school or on separate but adjacent sites sharing core facilities with the large high school. All small high schools funded from this program must have separate administrations and toilet area on the site.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The new construction grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

Special Education—Therapy

The new construction grant will be increased for the area of therapy rooms, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for severely disabled individuals with exceptional needs. The current unit cost per square foot of therapy area is as follows:

- $252 per square foot for toilet facilities
- $139 per square foot for other facilities

The amounts shown above are the 50 percent State share and are adjusted annually in the same manner as the new construction grant.

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if all of the following conditions are met:

- The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE for the net school building capacity for the project plus any existing enrollment at the site, if any.
- At least 60 percent of the classrooms in the project construction plans are in multi-story facilities.
- For new construction of a new school site, the value of the site being acquired is at least $750,000 per useable acre. This condition does not apply to new construction additions to existing school sites.

Urban locations on impacted sites are generally in areas of high property values or high population density, creating an environment difficult for districts to acquire ample real property, which causes increased project costs uniquely associated with urban construction. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter and by OPSC's review of the project construction plans and site appraisal.

If the above criteria are met, the urban supplemental grant is calculated on a sliding scale as follows:

New Construction Urban Grant Adjustment

IF...	THEN...
the useable acres are 60 percent of the CDE recommended site size, as described above...	the urban grant adjustment is 15 percent of the New Construction Grant and of the funding for additional grants for replaced facilities*, small size projects† and new school projects‡, and a 1.166 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

For new construction of a new school site, the adjustment shall not exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the number of the pupil grants requested in the application§. This limit does not apply to new construction additions to existing school sites.

* SFP Regulations, Section 1859.73.2, "New Construction Additional Grant for Replaced Facilities"

† SFP Regulations, Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

‡ SFP Regulations, Section 1859.83(c), "Excessive Cost to Construct a New School Project"

§ SFP Regulations, Section 1859.83(d)(2)(A), "Excessive Cost Due to Urban Location, Security Requirements and Impacted Site"

District Project Contribution

Every new construction application is a joint funding effort between the local school district and the State through the SFP. The State grant is discussed in the section entitled "New Construction Grant Amounts", earlier in this section. The total State grant represents 50 percent of the total project cost, with the district contributing the remaining 50 percent of the total project cost. The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project is used as a match, the savings must be from a new construction project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 50 percent local contribution on deposit at the time that the project apportionment is made. However, when the project fund release is requested, the district must certify that the district's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, at closeout the district must be able to show that 50 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 50 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute the 50 percent local share of a project can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for pre-approval of financial hardship status (see Section 10, "Financial Hardship") before submitting a funding application. In addition, this pre-approval enables districts to request a separate apportionment for site acquisition and/or design costs, if necessary, any time after the application for eligibility determination has been filed and before its financial hardship status expires.

Effects of Reorganization

Districts who are affected by a reorganization election on or after November 4, 1998, may not file a funding application for new construction until after the notification of the reorganization election. If the district had established new construction eligibility prior to reorganization, it must adjust the baseline eligibility on the *Eligibility Determination* (Form SAB 50-03) prior to filing new applications. Alternatively, the district can choose to certify that the reorganization does not result in a loss of eligibility for the project requesting funding. Districts that are newly created by the result of a reorganization can submit a funding application after approval of the election by the CDE.

SAB Approval Process

The applications for funding are presented to the SAB for approval in the order of their OPSC receipt date. The SAB approval (action) can either be an apportionment or "unfunded" approval, depending on the availability of funds for new construction.

Fund Release

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed. In addition, the SFP Fund Release Report is posted monthly on the OPSC Web site. This report indicates the claim schedule number, the date the funds were released, and the dollar amount released.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References

» California Code of Regulations, Section 6000, et seq.
» SFP Regulations, Section 1859.74, "Additional Grant for Site Acquisition" and 1859.74.1, "Site Acquisition Guidelines."
» SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant".

Section 6

Charter School Facilities

Introduction

In 2002, Article 12 in Assembly Bill (AB) 14, established a pilot program to provide charter schools with funding to construct new facilities, known as the "Charter School Facilities Program" (CSFP). With the successful passage of Proposition 47, this program received $100 million in bond funding. In 2004, Senate Bill 15 was passed to make revisions to the CSFP in order to maximize the number of projects funded with an additional $300 million in bond funding made available with the passage of Proposition 55. The most recent bill, AB 127, was passed in 2006 to further revise the CSFP and an additional $500 million was made available with the passage of Proposition 1D. The CSFP permits a charter school or school district filing on behalf of a charter to apply for a preliminary apportionment (reservation of funds) for the construction of new facilities and/or rehabilitation of existing district owned facilities that are at least 15 years old. To qualify for funding, a charter must be deemed financially sound by the California School Finance Authority (CSFA).

The preliminary apportionment for a CSFP project must be converted within a four-year period to an adjusted grant apportionment meeting all the School Facilities Program (SFP) criteria, unless a single one-year extension is granted.

Eligibility

To apply for funding under Proposition 47 and 55, the school district in which the charter is physically located must have had SFP new construction eligibility. Proposition 1D removed this requirement. Now, new construction eligibility is no longer required. However, the school district in which the charter school is physically located must certify to the number of district unhoused students a charter school will house in a new construction project. A charter school applying on its own behalf may apply once it has notified the superintendent and governing board of the district, where it is physically located, of its intent to apply in writing (with proof of delivery) 30 days prior to submitting the preliminary application to the Office of Public School Construction (OPSC). The notice to the district shall include the number of pupils the charter intends to house, a request that the school district certify to the number of the district's unhoused pupils that the charter project will house and a request that the district update its new construction eligibility for current enrollment.

The $100 million provided in Proposition 47 for the program was exhausted in July 2003. The next $300 million provided in Proposition 55 was exhausted in February, 2005. To apply for the funds made available with the passage of Proposition 1D, charter schools and districts must submit an *Application for Charter School Preliminary Apportionment* (Form SAB 50-09), to the OPSC by June 5, 2007. In addition, if funds become available through over reservation of preliminary apportionment or lease payments, the State Allocation Board (SAB) may establish additional application periods.

Application Process

A complete application is an essential element in the process of receiving a preliminary apportionment for the charter school or district's project. The information provided is the basis for determining the apportionment amounts that the charter school or district on behalf of the charter school will receive. The form provides the OPSC with the general project information to determine the future new construction or rehabilitation adjusted grant; the grade level of the project, the number of SFP pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested.

The applicant will need to submit a Form SAB 50-09, and all other supporting documents (i.e., supporting historical documents for allowances requested on application, architect's drawing of existing facilities to be rehabilitated, etc.).

Once the OPSC receives the preliminary application, an initial review will be conducted to ensure that the pupil grants or rehabilitation square footage requested is commensurate with the project being built. In addition, the allowance requested on the application will be subject to review. In conjunction, the CSFA will be determining the financial soundness of the applicant. For further information regarding the criteria for financial soundness, please contact CSFA at www.treasurer.ca.gov/csfa.

For additional detail, please review the general and specific instructions on the Form SAB 50-09 and the application submittal requirements available on the OPSC Web site.

Funding Criteria

If the estimated total apportionment of all financially sound applicants approved by CSFA exceed the funds available, the SAB shall provide preliminary apportionments using the following criteria:

- Representative of the various geographical regions of the State.
- Representative of urban, rural, and suburban regions of the State.
- Representative of large, medium, and small charter schools throughout the State.
- Representative of the various grade levels of the pupils served by charter school applications.

Within each category above, preference is to be given to charters in overcrowded school districts, charters in low-income areas, not-for-profit charters, and for the use of existing district facilities. A preference points calculation system, based on the criteria set above, will be used in determining the projects that will be funded from each category. If more than one application is received that has the same criteria within a category, the SAB will fund based on which project has the highest preference points.

For the purposes of determining the preference points given for projects in overcrowded districts, the applicant will need to submit an *Enrollment Certification/Projection* (Form SAB 50-01), for the school district and any supporting documents required. An *Existing School Building Capacity* (Form SAB 50-02), and *Eligibility Determination* (Form SAB 50-03), will not need to be submitted unless the school district has not established new construction eligibility under the SFP. If the eligibility has not been established, the eligibility documents necessary to establish new construction eligibility will have to be submitted prior to the end of the filing period. (See Section 4, "Application for Eligibility.")

Preliminary Apportionment Components

The grants provided at the preliminary apportionment consist of the following:

NEW CONSTRUCTION	REHABILITATION
• Per Pupil base grant amount • Multi-level Construction Grant Amount • Site Acquisition • Site Development • Supplemental Grants • Inflator Factor	• Grant based on square footage • Elevators • Supplemental Grants • Inflator Factor

This amount shall then be the recommended preliminary apportionment for the proposed CSFP project presented to the SAB for a reservation of funds.

Preliminary Apportionment Determination for New Construction

To determine the funding for a new construction project, the preliminary apportionment would be divided into "construction" costs and "site acquisition" costs, as shown below:

CONSTRUCTION COSTS (FULL GRANT)	SITE ACQUISITION COSTS
• Base Grant • Multi-level Construction • Site Development • General Site Development • Small Size Project • Urban Allowance • Geographic Percentage Factor • Inflator Factor	• Site purchase • Site other 4 Percent • Hazardous Material Clean-up • Relocation and Department of Toxic Substance Control fees

Please see Section 5, "New Construction Funding," for a full explanation of the construction costs grants. The OPSC also has a calculator on its website for estimating the CSFP grant.

The current CSFP grant amounts are as follows:

CSFP Grant Amounts

CLASSIFICATION	CSFP PUPIL GRANTS (2007)	CLASSIFICATION	CSFP PUPIL GRANTS (2007)
Elementary	$ 8,120	Special Day Class—Non-Severe	$17,304
Middle School	$ 8,597	Special Day Class—Severe	$25,874
High School	$11,229		

If a district requests a preliminary apportionment that includes a reservation for multi-level classroom construction, the CSFP pupil base grant will be increased by 12 percent to reserve the maximum allowance.

If the request for a preliminary apportionment includes estimated site development costs, the allowance shall be determined based upon either the State default amount of $70,000 per proposed net useable acre,

actual, or historical cost. The estimated site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project. For projects that are acquiring additional acreage, a general site allowance may be requested.

A district may request estimated excessive hardship costs for Geographic Location, Small Size Project or Urban Location, Security Requirements and Impacted Site.

The preliminary apportionment consisting of all applicable estimated allowances shall be increased by 32 percent in anticipation of cost increases in future years. The inflator factor is based upon the average per year Marshall Swift Class B Construction Cost Index. Site acquisition costs will not be subject to the inflator factor. This increase is not applicable to Proposition 55 apportionments.

Helpful Hint:
If you plan to file an application for the 2007 filing period, please contact your project manager for more information.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. In addition, a separate allowance is available for toxic sites. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project, the median cost of the consummated sales transactions within the general location multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. In either case, the applicant must obtain a preliminary recommended site size letter from the California Department of Education (CDE). Before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount.

Additionally, the property value will be increased by four percent for title, escrow and survey fees. An allowance for estimated relocation and Department of Toxic Substance Control (DTSC) costs may be included.

Preliminary Apportionment Determination for Rehabilitation

The preliminary apportionment for a rehabilitation project and supplemental grants, if eligible, are shown below:

- Grant based on the square footage in the project
- Small Size Project
- Urban Allowance
- Geographic Percentage Factor
- Elevators
- Inflator Factor

The amount of funding will be determined by first adding the square footage of all the minimum essential facilities (multi-purpose room, library, gym or administration) and the square footage for the number of classrooms the charter school is entitled to use based on the State loading standards. The square footage in the project would then be multiplied by the current rehabilitation cost standard which is $140 per non-toilet area square foot and $252 for toilet square footage. This grant amount cannot exceed what a new construction project would receive based on the number and grade level of students to be served by the rehabilitation charter school project.

A district may request estimated excessive hardship costs for Geographic Location, Small Size Project, elevators or Urban Location, Security Requirements and Impacted Site.

The preliminary apportionment consisting of all applicable estimated allowances shall be increased in anticipation of cost increases in future years. The inflator factor is based upon the average per year Marshall Swift Class B Construction Cost Index.

Apportionment Conversion

The preliminary apportionment for a CSFP project must be converted within a four-year period to an adjusted grant apportionment meeting all the School Facilities Program (SFP) new construction program criteria required for such an apportionment, unless a single one-year extension is granted. A final apportionment request includes an *Application for Funding* (Form SAB 50-04) and all other documentation required for a complete adjusted grant application under the SFP provisions (see Section 5). At the time a new construction project is converted, the pupil request cannot exceed the number of pupils requested at the time of preliminary apportionment. Likewise, at the time a rehabilitation project is converted, the square footage cannot exceed the square footage requested at the time of preliminary apportionment.

Project Reductions/Increases

Once an application is submitted for a final apportionment, the project costs may be adjusted per the following:

Project Cost Adjustments

IF...	THEN...		
	PROPOSITION 47	PROPOSITION 55	PROPOSITION 1D
Preliminary apportionment sufficient to do project...	...project cost remains the same and final apportionment Board item will reflect preliminary apportionment amounts.		
Preliminary apportionment was more than needed...	...the overpayment shall be adjusted to reflect actual project costs on the final apportionment SAB item and the difference shall be returned to the unrestricted account to be used for other charter school facility purposes.		
Preliminary apportionment was insufficient and unrestricted funds remain in the account...	...a district may receive a project increase for eligible costs.	...the charter or district must come up with alternate means to complete the project. At the point of conversion, the preliminary apportionment amount will be the full and final apportionment.	...a district may receive a project increase for eligible costs.
Preliminary apportionment was insufficient and no unrestricted funds remain in the account...	...the preliminary apportionment amount will be the full and final apportionment. A district may elect to monitor the funds and wait until funds become available to convert the apportionment, provided it is before the four-year deadline.		...the preliminary apportionment amount will be the full and final apportionment. A district may elect to monitor the funds and wait until funds become available to convert the apportionment, provided it is before the four-year deadline.

Fund Release

Senate Bill 15 and AB 127 included provisions to allow advanced fund releases for site acquisition and separate design funding for the preliminary apportionments granted under Proposition 55 and Proposition 1D provided that the Charter School Agreements have been executed. The total advanced fund release for design funding can equal up to 20 percent of the preliminary apportionment total construction costs. The advanced fund release for site acquisition may be for up to the amount requested on the preliminary apportionment.

The CSFP provisions for a preliminary apportionment under Proposition 47 do not authorize any fund releases prior to submitting an application for final apportionment. Therefore, once a preliminary apportionment is received, all charter schools or districts on behalf of charter schools will need to ensure they can cover any costs incurred prior to filing an application for final apportionment.

Once a preliminary apportionment is converted to a final apportionment, the applicant has 18 months to apply for a fund release.

Closeout

When a CSFP project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a middle or high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted. Any project savings must be returned to the State.

To learn more about the CSFP program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

Section 7

Critically Overcrowded School Facilities

Introduction

The Critically Overcrowded School Facilities (COS) program was created by Assembly Bill (AB) 16 (Hertzberg) in 2002 and is a significant addition to the School Facilities Program (SFP). The COS program permits school districts with critically overcrowded school sites, as determined by the California Department of Education (CDE), to apply for a preliminary apportionment (reservation of funds) for new construction projects to relieve overcrowding. The COS program's preliminary apportionment serves only as a reservation of funds for future State assistance in the form of grants. The preliminary apportionment for a COS project must be converted within a four-year period to a new construction adjusted grant apportionment meeting all the SFP new construction program criteria required for such an apportionment, unless a single one-year extension is granted.

Project Eligibility

A district with SFP new construction eligibility established as described in Section 4 and critically overcrowded school sites included on a list of source schools as determined by the CDE may apply for a preliminary apportionment for projects to relieve overcrowding. For information regarding the CDE Source School List contact Mr. Fred Yeager at 916.327.7148 or visit the CDE Web site at www.cde.ca.gov.

An *Application for Preliminary Apportionment* (Form SAB 50-08) may be submitted to the Office of Public School Construction (OPSC) between November 5, 2002 and May 1, 2003 for projects to be funded with the proceeds of the November 5, 2002 bond or 60 days prior to and 120 days after the 2004 direct primary election or the 2004 statewide general election as appropriate for projects to be funded with those bond proceeds. A critically overcrowded school facilities project must:

- Relieve overcrowding by increasing the pupil capacity of the district and may be either a stand alone new school project or an addition to an existing school site.
- Identify at least 75 percent of the proposed pupil occupancy of the project as coming from a source school(s).
- Be located within either the attendance area or a one-mile radius of an elementary source school ; or, for a secondary source school, within the attendance area or a three-mile radius. The CDE may grant a variance from the distance maximums if the district can demonstrate that the variance is necessary to adequately provide facilities for the identified source school pupils.

Source Schools

To qualify as a source school a school site utilizing the 2001/2002 California Basic Educational Data System (CBEDS) enrollment must have pupil density greater than 115 pupils per acre for grades Kindergarten to six and 90 pupils per acre for grades seven to twelve. The CDE is responsible for determining and maintaining the list of source schools. A district may report their school site information to the CDE by submitting

SFPD Form 4.16 (*Certification of School Site Net Useable Acres*). For a copy of the SFPD Form 4.16 and additional information regarding the CDE source school list, please visit the School Facilities section of the CDE Web site at www.cde.ca.gov.

Once included on the CDE source school list, determine a source school's pupil eligibility or Qualifying Pupils, by subtracting the school's site density at 150 percent of the CDE recommended pupils per acre from its latest CBEDS enrollment. The remainder is the number of Qualifying Pupils at the source school site, which may be used to meet the project eligibility requirements above. The source school Qualifying Pupils eligibility amounts will be tracked separately and adjusted for changes in future enrollment, site density, preliminary apportionments and rescinded apportionments.

Preparing An Application

A complete application is an essential element in the process of receiving a preliminary apportionment for the district's project. The information provided is the basis for determining the apportionment amounts that the district will receive. All applications must be based on a previous SFP new construction eligibility approval or must have the eligibility application as a part of the package (see Section 4, "Application for Eligibility"). Please note district's requesting financial hardship assistance must receive that status prior to filing an application (see Section 10, "Financial Hardship"). The Form SAB 50-08 serves as a vehicle for districts to request a preliminary apportionment for a new construction project. The form provides the OPSC with the general project information to determine the future new construction adjusted grant; the grade level of the project, the number of SFP and source school Qualifying Pupils the project will serve, whether or not a site is to be acquired, and if any supplemental grants are requested. To complete the Form SAB 50-08 the district representative will need some or all of the following information.

- Appraisal, Preliminary Appraisal, or Median Cost valuation of the property to be acquired.
- Relocation and Department of Toxic Substances Control cost documents.
- Cost Estimate for site development and approved site development and off-site plans (to substantiate actual or historical cost submittals).
- A copy of the certified CDE Source School List pages or CDE Source School certification letter.
- Copy of the latest information for the Source School(s) submitted approximately October 15th of each year to the California Department of Education to complete the California Basic Educational Data System (CBEDS).

For additional detail, please review the General and Specific instructions on the Form SAB 50-08 and the Application Submittal Requirements available on the OPSC Web site.

Preliminary Apportionment Components

A COS preliminary apportionment is intended to provide the estimated future State's share for all necessary project costs including site acquisition, site development and supplemental allowances. A district may request a preliminary apportionment for the following:

- COS Pupil Grants (New Construction Grant (per pupil) plus the increase for Fire Code requirements)
- Multi-level Classroom Construction
- Site Acquisition
- Site Development
- Project Increases
- Financial Hardship
- Inflation Factor

The COS Pupil Grant is calculated by multiplying the SFP pupils assigned to the project by the per-pupil grants established in law and the increase for Fire Code requirements. The COS Pupil Grants are adjusted by the State Allocation Board (SAB) annually (each January) based on the change in the Class B Construction Cost Index. The current COS grant amounts are as follows:

Current COS Grant Amounts

CLASSIFICATION	COS PUPIL GRANTS	CLASSIFICATION	COS PUPIL GRANTS
Elementary	$ 8,091	Special Day Class—Non-Severe	$16,125
Middle School	$ 8,560	Special Day Class—Severe	$24,110
High School	$10,896		

If a district requests a preliminary apportionment that includes multi-level classroom construction, the New Construction Grant will be increased by 12 percent to reserve the maximum allowance.

The preliminary apportionment for the estimated site acquisition shall be determined by the submittal of an appraisal or preliminary appraisal, when available. The appraisal or preliminary appraisal should be made or updated no more than six months prior to the application submittal to the OPSC. In cases where a specific site has not been identified for the project; the median cost of the consummated sales transactions within the general location area multiplied by the proposed net useable acreage to be acquired shall determine the property value reservation. The proposed acquisition acreage amount must be compatible with CDE standards; and, before determining the median cost, the information for recorded sale transactions should be expressed in a per acre amount. In addition the property value will be increased by four percent for title, escrow and survey fees and by one-half for hazardous material/waste removal and remediation cost. An allowance for estimated relocation and DTSC costs may be requested, this will be based on either the State's default allowance of 21 percent of the property value, actual, or historical cost information.

If the request for a preliminary apportionment includes estimated site development costs, the allowance shall be determined based upon either the State's default amount of $70,000 per proposed net useable acre, actual, or historical cost. The estimated site development cost shall be the amount for anticipated service-site, off-site and/or utilities for the project.

A district may request estimated excessive hardship costs for Geographic Location, Small New School or Urban Location, Security Requirements and Impacted Site.

If the district has a valid financial hardship status for the COS project, the estimated State share amount shall be doubled to provide a reservation for the estimated district's matching share assistance. When the financial hardship review has determined that the district has contribution amounts, the preliminary apportionment amount will be reduced by that amount. However, before the preliminary apportionment is converted to a final apportionment, the district must re-qualify financial hardship status to determine its eligibility and contribution amount.

Apportionment Conversion

Converting a preliminary apportionment to a final apportionment request includes an *Application for Funding* (Form SAB 50-04) and all other documentation required for a complete new construction adjusted grant application under the SFP provisions (see Section 5, "New Construction Funding"). In addition, the pupils requested on the Form SAB 50-04 must be no less than 75 percent of and cannot exceed the number of pupils requested on the Form SAB 50-08. When a district converts the preliminary apportionment to a final apportionment the project must still be supported by SFP new construction eligibility; however, the Source School(s) Qualifying Pupil eligibility will not be re-evaluated. If the project is not currently supported by SFP new construction eligibility, Assembly Bills 2950 (Chapter 898, Statutes 2004) and 491 (Chapter 710, Statutes 2005) provide for an "alternative eligibility method", such as current enrollment, current residency data or a projection of residency data to justify the project. A school district requesting financial hardship status must qualify for that status and have all Capital Project Fund monies analyzed to determine if the school district is able to contribute toward its project.

Project Increases

When an application for final apportionment is made, that preliminary apportionment may be adjusted for increases only if there are sufficient reserve funds available in the COS facilities account to fund the increases. If reserve funds are not available, the increase amount will be placed on a "Final Apportionment Unfunded List" until such time that funds may become available within the COS facilities account to apportion the increases. However, if funds do not become available and the maximum time frame of five years has expired, the original preliminary apportionment becomes a full and final apportionment.

SAB Approval Process

If funds are insufficient to fully fund all of the preliminary applications received during an application filing period, the SAB shall first apportion to those projects that would house pupils from source schools with the highest density levels relative to the CDE standard.

Substantial Progress

Prior to converting a preliminary apportionment to a final apportionment, the district must report annually to the SAB on the progress of the COS project. The local governing school board must hold a public hearing annually discussing the progress toward completing the project. Included in the first annual report to the SAB, the district shall certify that the CDE has determined there is at least one approvable and adequate site for the COS project within the identified general location area. If the school district cannot certify to the approvable site, then the preliminary apportionment will be rescinded.

At the end of the fourth year, if a school district is unable to submit its application for final apportionment, it may apply for a single one-year extension provided that the COS project has a CDE contingent or final site approval and the final construction plans have been submitted to DSA for review and approval; or other evidence satisfactory to the SAB that substantial progress has been made towards completing the requirements for filing an application for final apportionment.

Fund Release

After completing the substantial progress requirements for the first annual report to the SAB, a district may request an advanced release of funds from a preliminary apportionment when certain criteria are met. An advanced fund release for design and/or site acquisition may be requested by districts with approved financial hardship status. If applicable, an advanced fund release for an enviromental hardship site aquisition may be requested for any project. Advanced fund releases may be requested by submitting a complete *Fund Release Authorization* (Form SAB 50-05). If the advanced request includes the release of funds for site acquisition, the district must also submit a Form SAB 50-08 to determine eligible costs. Once a preliminary apportionment is received, all districts will need to ensure they can cover any costs incurred, taking into account any advanced fund releases, prior to filing an application for final apportionment.

Closeout

When a COS project converts to a final apportionment, it will be subject to all SFP progress and auditing standards. A substantial progress report will be required at 18 months from the date the final apportionment was made. Annual expenditure reports will be required beginning one year from the date of the first fund release until the project is complete. The project is considered complete when 3 years elapse from the date of the final fund release for an elementary project, or 4 years for a high school project, or when the school district declares the project complete, at which time final expenditure reports must be submitted.

To learn more about the COS program, contact your OPSC project manager or visit the OPSC Web site at www.opsc.dgs.ca.gov.

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Section 8

Joint-Use Projects

Introduction

Senate Bill 15 amended the Joint-Use Program created by Assembly Bill 16 under the School Facility Program (SFP). Fifty million dollars was made available and partly apportioned in July 2003 for joint-use projects, and another $50 million was made available for apportionment at the August 2004 State Allocation Board (SAB), due to Proposition 55 passing in March 2004. These funds were partly apportioned in July 2005 and August 2006. An additional $29 million was made available for apportionment due to Proposition 1D passing in November 2006. Proposition 1D also provided the SAB authority to transfer up to $21 million in prior bond funds for the purpose of funding joint-use projects.

Qualifying projects will be submitted to the July 2007 SAB meeting for apportionment. If joint-use funds remain after the current funding cycle, they will be available for apportionment for qualifying joint-use projects at the July 2008 SAB meeting.

This program allows a school district to utilize funds from a joint-use partner to build a joint-use project the district would not otherwise be able to build due to lack of financial resources. There are two types of joint-use projects that the district may apply for, which are referred to as Type I and Type II.

A Type I joint-use project is part of a qualifying new construction project that will increase the size, creates extra cost, or does both beyond that necessary for school use of the:

- Multipurpose room
- Gymnasium
- Childcare facility
- Library
- Teacher Education facility

A Type II joint-use project is a stand-alone project or part of a modernization project located at a school site that does not have the type of facility or the existing facility is inadequate and will reconfigure[1] existing school buildings, construct new school buildings, or both to provide for:

- Multipurpose room
- Gymnasium
- Childcare facility
- Library

[1] Reconfigure means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building and any necessary replacement of displaced classrooms or other Minimum Essential Facility (MEF). Reconfiguring an existing school building must not reduce the district's capacity or displace another MEF. An inadequate MEF must not be constructed to replace a reconfigured MEF. In any case involving the replacement of lost capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be a part of the plans submitted in support of the joint-use application, must occur concurrently, and cannot be part of a SFP new construction application.

» Teacher Education facility
» Pupil Academic Achievement facility[2]

The funding for joint-use projects is provided in the form of grants. With the exception of a Type I (Extra Cost), the grants are made up of a base grant and a number of supplemental grants. For a Type I (Extra Cost) project, the grant is a straight dollar amount based upon the cost estimate. The State share for a joint-use project is 50 percent of the eligible project costs, with the joint-use partner contributing a minimum of 25 percent of the eligible project costs and the district contributing 25 percent of the eligible project costs. If the district has passed a bond which specifies that the monies are to be used specifically for the joint-use project, the district may provide up to the full 50 percent local share.

The district must have joint-use eligibility and square footage eligibility (except for a Type I, Extra Cost) for the type of project they are applying for, before they can request joint-use funding. This section explains the eligibility requirements for each type of joint-use project, the funding application process, and how to determine the joint-use grant. This section focuses on the most common situations. Individual projects may have variations that are not covered in this section. The district representative is encouraged to contact the Office of Public School Construction (OPSC) project manager to discuss specific project details.

Project Eligibility

Before a district can submit an application for funding, the project must have project eligibility. Project eligibility is different for the two types of joint-use projects.

Type I Project Eligibility

To qualify as a Type I joint-use project, the district must meet the following criteria:

» The Joint-Use Partner is a governmental agency, an Institution of Higher Education, or a nonprofit organization.
» The project increases the size, creates extra cost, or does both for the:
  – *Multipurpose room*
  – *Gymnasium*
  – *Childcare facility*
  – *Library*
  – *Teacher Education facility*
» The district has entered into an approvable Joint-Use Agreement that meets the criteria of Education Code, Section 17077.42
» The joint-use project is part of a qualifying SFP new construction application
» The project has Square Footage Eligibility as specified in SFP Regulations, Section 1859.124 (except a Type I Extra Cost project)
» The facility is located at the school site of the SFP project
» The construction contract was executed after April 29, 2002
» The project has DSA approved plans
» The project has California Department of Education (CDE) approval of the plans

[2] Pupil Academic Achievement may be grandfathered in if the plans are accepted by the Division of the State Architect for review and approval prior to January 1, 2004.

Type II Project Eligibility

To qualify as a Type II joint-use project, the district must meet the following criteria:

- The Joint-Use Partner is a governmental agency, institution of Higher Education, or a nonprofit organization.
- The project reconfigures existing school buildings, constructs new buildings, or both to provide for the:
  - *Multipurpose room*
  - *Gymnasium*
  - *Childcare facility*
  - *Library*
  - *Teacher Education facility*
  - *Pupil Academic Achievement facility*[1]
- The district has entered into an approvable Joint-Use Agreement that meets the criteria of Education Code, Section 17077.42
- The project to reconfigure an existing building is part of a qualifying SFP modernization application located at the school site of the SFP project, or
- The project to reconfigure or construct a new school building is a stand-alone project located on the public K–12 school site
- The project has square footage eligibility as specified in SFP Regulations, Section 1859.124
- The school site does not have the type of facility or the existing facility is inadequate
- The construction contract was executed after April 29, 2002
- The project has DSA approved plans and CDE final plan approval if the project is part of a SFP modernization application, or
- The project has preliminary plans and CDE approval of the preliminary plans if it is a stand-alone project

Funding Process

Subject to available funds, applications are accepted for upcoming funding cycles from June 1st through May 31st each year.

A district may submit more than one application for each type. Type I Joint-Use projects are funded first and Type II Joint-Use projects are funded last. The district's first application within each type of joint-use project is ranked and funded with other district's first applications in date-received order. The district's second application is then ranked and funded with other district's second application in date-received order, and so on within each type of joint-use project, until funds are exhausted.

The following demonstrates the necessary steps for joint-use funding:

- The district submits an application for funding package
- The OPSC reviews the package
- The SAB approves and apportions the project in July
- The district submits DSA approved plans within one year from the date of apportionment (Type II Stand-Alone Project)
- The district requests a fund release and makes expenditures
- The district submits reports on expenditures
- The OPSC audits

[1] Only if plans and specifications were accepted by DSA prior to January 1, 2004.

The district must apply for joint-use funding on the *Application for Joint-Use Funding* (Form SAB 50-07). The Form SAB 50-07 not only provides the OPSC with the specific joint-use information such as type of joint-use project and square footage eligibility, but it also serves as a certification by the district that they meet specific criteria of the law and regulations.

The funding package will be reviewed by the OPSC for completeness and placed on a statewide workload list. District representatives can view the workload list on the OPSC Web site at www.opsc.dgs.ca.gov. If during the initial review, it is determined that information is missing, the district will be notified and given a timeframe to respond to the OPSC's request. In the event the OPSC does not receive the requested information within the given timeframe, the application will be returned to the district. The district may resubmit the application at anytime within the filing period, when they have all the components of a complete application.

Applications will be approved until there are no funds available. In this instance, all applications that do not receive funding will be returned to the district, and the district may resubmit the application in subsequent filing periods.

Preparing An Application

The following chart lists the supporting documents for each type of joint-use project that must be submitted with the Form SAB 50-07:

Joint-Use Funding Required Documents

	TYPE OF FUNDING		
DOCUMENT	TYPE I	TYPE II Part of SFP Modernization Project Reconfigure Existing School Buildings	TYPE II Stand-Alone Project Reconfigure/Construct New School Buildings
Joint-Use Agreement	✖	✖	✖
DSA Approved Plans	✖	✖	
Preliminary Plans			✖
CDE preliminary plan approval			✖
CDE final plan approval	✖	✖	
Cost estimate for site development	✖	✖	✖
Cost estimate for facility being built*	✖		

* If the project is for a Type I, Extra Cost

Joint-Use Grant Amounts

With the exception of a Type I project for Extra Cost, the joint-use grant will consist of a base grant for toilet and non-toilet facilities, which can be increased by certain supplemental grants. As of the date of this guidebook, the base grant is $252 per square for toilet area and $139 per square foot for non-toilet area. The grant amounts will be adjusted each year using the Class B index. Each project has a maximum state contribution of $1 million for an elementary school, $1.5 million for a middle school, and $2 million for a high school.

Supplemental Grants

The district can increase the joint-use grant with certain supplemental grants. The following is a brief explanation of the supplemental grants under the Joint-Use Program:

Geographic Location. A supplemental grant is available to projects located in areas of California that are remote, difficult to access, or lack a pool of contractors. The augmentation to the joint-use grant due to their geographic location can be found in Regulation Section 1859.83 (a).

Project Assistance. For a Type II stand-alone joint-use project, the SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The additional grant of $5,168 (as of the date of this guidebook) may be used for costs associated with the preparation and submission of the funding application. The grant will be adjusted each year using the Class B index.

Site Development. A supplemental grant is provided for the purpose of developing the site where the project is located. If the joint-use project is linked to a new construction project and site development costs are not covered under the new construction application because the site development is specific to the joint-use project, the district may apply for the site development under the joint-use project. If the joint-use project is a stand-alone project, the district may apply for applicable site development costs that pertain to the joint-use facility. Fifty percent of the following site development costs may be available for joint-use projects:

- Service site development improvements are performed within school property lines and may include site clearance, rough grading, soil compaction, drainage, and eligible erosion control. This portion of the site preparation is accomplished prior to the general site development and construction of buildings.
- Utility service development includes improvements of water, sewer, gas electric, and telephone from the closest existing utility connection to the project site meter or major building lateral location.

Off-site development is not an allowable expenditure under the Joint-Use Program.

Small Size Projects. A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds for core facilities and to make up for the lack of economies of scale when districts build small projects. The joint-use grant can be increased by 12 percent if the qualifying new construction or modernization project is linked to houses less than 101 pupils, or four percent if the qualifying new construction or modernization project is linked to will house over 100, but no more than 200 pupils. If the project is a Type II stand-alone joint-use project, the district is entitled to an eight percent increase to the grant.

Type II Joint-Use Grant. A Type II joint-use project cannot have an existing facility or the existing facility must be inadequate. A facility is considered inadequate when the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart of Square Footages in Regulation Section 1859.124.1. A Type II joint-use project must have square footage eligibility. If the existing facility meets the test of being inadequate, or there is not an existing facility, then the square footage eligibility for a Type II joint-use project is the amount determined using the Chart of Square Footages.

Once the square footage eligibility for a Type II is established, the grant can be determined. The base grant is calculated by adding the following:

» $252 for Toilet Square footage in the facility
» $139 for Non-toilet Square footage in the facility
» Fifty percent of applicable supplemental grants

If the district is building area beyond their square footage eligibility, the OPSC will prorate the grant by determining the percentage of the whole facility that represents the joint-use project, and the grant will be determined using that percentage.

Type I Joint-Use Grant (Extra Cost). There is no square footage eligibility for a Type I that contains Extra Cost of the facility. The grant for a Type I Extra Cost can be determined by taking 50 percent of the construction cost of the whole joint-use facility and any applicable service site development costs, and subtracting the base grant amounts of $252 for toilet area in the project and $139 for non-toilet area in the project. The difference is the extra cost.

Type I Joint-Use Grant (Increased Size). A Type I joint-use project that increases size must have square footage eligibility. The first step in determining the grant is to determine the square footage eligibility. The square footage eligibility for a Type I joint-use project that increases the size of the project is calculated by first determining what size facility the district is entitled to based upon the CBEDS and the Chart of Square Footages, located in Regulation Section 1859.124.1. Then simply subtract this amount from the actual square footage being built, and the difference is the square footage eligibility.

Once the square footage eligibility for a Type I is established, the grant can be determined. The first step in determining the grant is to take the square footage eligibility and divide it by the total square footage of the facility being built. This will determine the percentage of the whole joint-use facility that the increased size represents. The base grant then is calculated by multiplying this amount by:

» $252 for Toilet Square footage in the facility
» $139 for Non-Toilet Square footage in the facility

In addition to the above, the project may be eligible for 50 percent of applicable supplemental grants.

Type I Joint-Use Grant (Increased Size and Extra Cost). In some instances, a Type I project may be for both increased size and extra cost. The grant for a Type I project that increases the size and contains extra cost shall be calculated in the following manner:

» Start with the architect's cost estimate to construct the facility.
» Subtract the cost to build the standard size facility that the district would be entitled to based upon the Chart of Square Footages. Since this project is built beyond the standard size facility, first divide the square footage determined from the Chart of Square Footage, by the total joint-use facility. This amount will determine the percentage of the whole facility that represents the standard size facility the district would otherwise be eligible for. Once this amount is determined, multiply this amount by the toilet facility area and by $252 and by the non-toilet facility area and by $139. This amount then becomes the amount to build the standard size facility.
» The difference is the grant amount for increased size and extra cost.
» Add any applicable service site costs.

Urban Locations, Impacted Sites, Security Requirements. Districts with projects in urban locations, on impacted sites, or in areas with security issues, may request a supplemental grant. Contact your project manager for qualifying information.

Joint-Use Partner Project Contribution

The State and local contribution to a joint-use project remains 50/50. However, the Joint-Use Partner contribution has been reduced to a minimum of 25 percent of the eligible joint-use project costs with the remaining local contribution coming from any other district source that would not otherwise be available to the SAB. The district need not have the entire 25 percent joint-use partner contribution on deposit at the time that the project approval is made. However, when the project fund release is requested, the district must certify that the joint-use partner's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. The district representative should be aware that regardless of when the share is contributed to the project, at closeout the district must be able to show that 25 percent of the expenditures on the project were from funds provided by the joint-use partner, unless the district has passed a local bond which specifies that the monies are to be used specifically for the joint-use project, then the district can opt to pay up to the full 50 percent local share of eligible costs. The State share will always be a maximum of 50 percent of the eligible project costs. If the district is unable to demonstrate the expenditure requirement, the apportionment will be reduced. Financial Hardship assistance towards the matching share for Financial Hardship districts will not be provided by the State.

If there are project costs beyond the eligible project costs, those costs can be paid by the district, joint-use partner, or any other local source.

Fund Release

After the funding application is approved and apportioned by the SAB, the next step in the process is the fund release to the County School Facilities Fund for use by the district.

The joint-use grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the joint-use grant apportionment by the SAB, or the grant will be rescinded without further SAB action. The only exception to this is if the joint-use project is a Type II (stand-alone project). If it is a Type II (stand-alone) joint-use project, the district has one year from the apportionment date to submit final DSA approved plans. Once the DSA approved plans are received by the OPSC, the district will have 18 months from that date to submit the Form SAB 50-05, or the grant will be rescinded without further SAB action.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

References

» Education Code, Section 17077.42
» SFP Regulations, Section 1859.124.1, "Square Footage Facility Chart."
» SFP Regulations, Section 1859.83 (a), "Excessive Cost Hardship Grant, Excessive Cost due to Geographic Location."

Section 9

Modernization Funding

Introduction

The School Facility Program (SFP) provides funding assistance to school districts for the modernization of school facilities. The assistance is in the form of grants approved by the State Allocation Board (SAB), and requires a 40 percent local contribution. A district is eligible for grants when students are housed in permanent buildings 25 years old or older and relocatable classrooms 20 years old or older and the buildings have not been previously modernized with State funds. The grant amount is increased and funding for specific utility upgrades is allowed if permanent buildings to be modernized are 50 years old or over. See Section 4, "Application for Eligibility."

The modernization grant (pupil grant) amount is set in law and is based on the number of students housed in the over-age facilities. In addition to the basic grant amount, a district may be eligible for supplemental grants depending on the type and location of the project. In some cases, districts unable to contribute some or all of the local match may be eligible for financial hardship. See Section 10, "Financial Hardship" for more information on this subject. Once the grants are determined for a project, a request is sent to the SAB for a modernization adjusted grant apportionment.

The modernization grant can be used to fund a large variety of work at an eligible school site. Air conditioning, insulation, roof replacement, as well as the purchase of new furniture and equipment are just a few of the eligible expenditures of modernization grants. A district may even use the grants to demolish and replace existing facilities of like kind. However, modernization funding may not be spent for construction of a new facility, except in very limited cases generally related to universal design compliance issues, or for site development.

This section explains the funding application process, typical requirements, and how to determine the modernization adjusted grant amount. It is important to understand that the discussion in this section focuses on the most common situations. There are many variations that may apply to specific projects that can not be covered in this brief overview. As always, the district representative should meet with the Office of Public School Construction (OPSC) project manager and discuss the district plan in detail.

Available Modernization Funding

There are two types of funding applications which may be made under the modernization program:

Modernization Adjusted Grant. A modernization adjusted grant is intended to provide the State's full share for all necessary project costs. In a typical project, a modernization adjusted grant includes the modernization grant (pupil grant) and any applicable supplemental grants as described in this section under "Supplemental Grants".

Separate Design. A separate design apportionment is available for districts that qualify for financial hardship. This apportionment represents 25 percent of the modernization grant[1]. Separate design funding is intended to allow a district to hire an architect to prepare the project plans for Division of the State Architect (DSA) approval. When the plans are complete and approved, and the district is ready to request the remaining modernization adjusted grant, it will be reduced by the design apportionment previously made.

Funding Process

After applying for and receiving approval of modernization eligibility, the process of applying for funding is as follows:

- » the district submits a funding application package;
- » the OPSC reviews the package;
- » the SAB approves the apportionment;
- » the district requests a fund release and makes expenditures;
- » the district submits reports on expenditures to the OPSC;
- » the OPSC audits.

The application for modernization funding is made on a single form, the *Application for Funding* (Form SAB 50-04). The form serves as a vehicle to collect the information necessary to calculate the amount of grants applicable to the project, and also is a certification from the district regarding compliance with requirements of law and the SFP Regulations. The district is ready to submit the application for funding after receiving approval by the California Department of Education (CDE) and the DSA of the plans for the proposed modernization project. In most cases, the district has determined its eligibility for modernization grants on the *Eligibility Determination* (Form SAB 50-03) before applying for funding. However, if the district has not established eligibility for the project previously, it may submit the eligibility application with the funding application (see Section 4, "Application for Eligibility").

The funding application is reviewed by the OPSC for completeness and placed on a workload list by date order received. District representatives can view the status of projects from the workload list that can be found on the OPSC Web site at www.opsc.dgs.ca.gov. The funding applications are then processed in date order for presentation to the SAB for consideration of apportionment. Note that at this time, the OPSC will reduce the funding request by the amount of previous apportionments to the project made under the SFP or Lease-Purchase Program (LPP).

In some cases, the OPSC may find that an application lacks required information. If this is the case, the district is asked to provide the needed information within a specified time. If the district is unable to comply, the application may be returned unprocessed. If this occurs, the district may resubmit the application at any time after the needed information is available. When the application is resubmitted it will be added to the workload list with the new receipt date.

When the SAB has no funds to apportion, the OPSC will continue to accept and process applications based on the date the application is received. The SAB will approve the application for placement on an unfunded list. An application for funding that is placed on an unfunded list is eligible for reimbursement pending the possible availability of future funding.

[1] SFP Regulations, Section 1859.81.1, "Separate Apportionment for Site Acquisition and Design Cost."

Preparing An Application

A complete application package is an essential element of the process of receiving funding for the district's project. The information provided is the basis for determining the grant amounts that the district will receive. The following discussion outlines the major elements of a complete application. This information is not necessary for a separate design funding request, unless noted.

All applications require a complete Form SAB 50-04 and must be based on a previous eligibility approved or must have the eligibility approved as part of the package (see Section 3, "Project Development Activities"). Eligibility for 50 year old buildings is not separate from the other eligibility at the site. If the district is requesting increased funding for pupils housed in 50-year old buildings, site diagrams with the ages and square footages of the buildings in the project must be provided with the application package. Also, please note that districts requiring financial hardship assistance must receive that status before filing a funding application (see Section 10, "Financial Hardship"). To complete the Form SAB 50-04 and to make the required certifications, the district representative will need at least the following supporting information.

Final DSA Approved Plans and Specifications

Education Code Section 17072.30 requires DSA approval of all final plans and specifications for new construction, modernization, or alteration of any school building for which the district is seeking State funding. If a district enters into a construction contract prior to receiving DSA approval of the plans and specifications, the project may not be eligible for State Funding. The date of the DSA approval letter, not the DSA stamp, is considered a valid approval. The DSA approval must be current and valid at the time of submittal of the application for funding to the OPSC. Plans should include all work eligible for funding through the SFP. If plans are submitted in AutoCAD format, a copy of the DSA approval letter is required.

- As of October 2005, all funding applications must be accompanied by the DSA Final Plan Approval Letter.
- Submit all plans necessary to substantiate modernization work. In addition, submit plans for work associated with excessive cost hardship requests listed on the Application for Funding (Form SAB 50-04) for rehabilitation/mitigation, accessibility, fire code, and elevators.
- It is acceptable to submit the specifications on a diskette that is IBM compatible.

Assessibility/Fire Code Requirements Checklist

This completed checklist must be submitted to the DSA when submitting projects that contain access compliance and/or fire code work. Once the checklist has been signed by the DSA, as part of the plan approval process, districts must submit it to the OPSC as part of its complete application package.

Cost Estimate

A complete construction cost estimate signed by the architect or design professional is required for the modernization project. The construction cost as submitted to the DSA must equal at least 60 percent of the total project cost (district and State share).

CDE Plan Approval Letter

The CDE must approve plans for modernization projects before they can be considered for funding under the SFP. The district should contact the School Facilities Planning Division (SFPD) of the CDE as early as possible in the planning process.

District Certifications

As previously mentioned, the Form SAB 50-04 is also an official certification to a number of SFP requirements. The form and the instructions to the form provide specific detail about the certifications; however, some of the issues to which the district representative will have to certify are as follows:

- The district has established a "Restricted Maintenance Account" (see Section 13, "Additional SFP Requirements and Features" for more information).
- The facilities to be modernized were not previously modernized under the LPP.
- Contracts for the services of an architect, structural engineer, or other design professional which were signed after November 4, 1998 were obtained pursuant to a qualifications based competitive process (see Section 3, "Project Development Activities" for more information).
- The property to be modernized using SFP funds is either owned by the district or county superintendent or it is leased from another governmental entity. If the property is leased, the lease is for at least 40 years from a non-federal governmental agency or 25 years from a federal governmental agency. The cost of the lease is not an eligible cost under the SFP.
- If this request is for a large new construction or a large modernization project, the district has consulted with the career technical advisory committee established pursuant to Education Code, Section 8070, and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code, Sections 51224, 51225.3(b) and 52336.1.
- All large modernization funding applications for comprehensive high schools must be accompanied by evidence of compliance with Education Code, Section 17070.95. Documentation may include any of the following:
  - *Minutes from a public meeting by the school district's governing board documenting the discussion with and the recommendations of the local CTEAC regarding the CTE facility needs assessment.*
  - *Minutes from the meeting with the local CTEAC regarding the CTE facility needs assessment and recommendations.*
  - *Letter from the local CTEAC to the school district that identifies the subject of the discussion, the CTE facility needs assessment, and recommendations.*
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to SFP Regulations, Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district.
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code, Section 1771.7, if the project is funded from Proposition 47 or 55 and the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003.
- Beginning with the 2005/2006 fiscal year, the district has complied with Education Code, Section 17070.75(e), by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair (see Section 13, "Additional SFP Requirements and Features" for more information).
- The district has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant federal, state, and local standards for the management of any identified lead.

Finally, to reduce the need to submit extensive supporting documentation, the OPSC will ask that the architect of record or other design professional certify to the following:

- The date that the DSA approved the plans and specifications.
- The number of classrooms demolished and not replaced and the number of classrooms constructed. (This is necessary to verify that no new construction, except the replacement of demolished facilities, is done with modernization funds.)
- That the cost estimate for the work in the plans and specifications as submitted to the DSA is at least 60 percent of the total grant provided by the State's and district's matching share.

Modernization Grant Amounts

The modernization grant is based on the number of pupils assigned to the project. This number may simply be the number of students enrolled at the site where the modernization will occur. This is usually true when all of the buildings at the site are 25 years or older for permanent buildings and 20 years or older for relocatable structures. In cases where only some of the buildings at the site are over age, and therefore eligible for modernization, the number of pupils assigned to the modernization project will probably be less than the total pupils on the site. The Form SAB 50-04 will assist the district in determining the proper number of pupils to be included in the application. When this number is determined, it is then possible to calculate the modernization grant amount as described in the next section. The following are the types of grants:

» Modernization Grant
  – *Modernization Grant for 50-Year-Old Buildings*
» Supplemental Grants

Modernization Grant

The pupil grant amount is intended to provide the State's share for all essential project costs, which include but are not limited to funding for design, the modernization of the building, education technology, unconventional energy, tests, inspections, and furniture and equipment. To calculate the district's modernization share, multiply the modernization grant by 0.6667.

Modernization Grant Calculation

The modernization grant for each pupil housed in buildings to be modernized is established by law.[2] The grant amount is adjusted every year in January, based on changes to the Class B construction cost index, by action of the SAB. As of January 2007, the modernization grants, which represent the State's 60 percent share of the project, are as follows:

Modernization Grant Amount

CLASSIFICATION	MODERNIZATION GRANT AMOUNT	COMMENTS
Elementary Pupil	$ 3,262	
Middle School Pupil	$ 3,450	Include grade six pupils if part of a 6–8 grade school.
High School Pupil	$ 4,516	
Special Day Class – Non-Severe	$ 6,953	
Special Day Class – Severe	$10,391	
State Special School	$17,325	

[2] Education Code, Section 17074.10.

Modernization Grant for 50-Year-Old Buildings

CLASSIFICATION	BASIC GRANT AMOUNT	CLASSIFICATION	BASIC GRANT AMOUNT
Elementary	$ 4,530	Special Day Class—Non-Severe	$ 9,656
Middle School	$ 4,792	Special Day Class—Severe	$14,440
High School	$ 6,274	State Special School	$24,066

A modernization grant request must be for at least 101 pupil grants, or the remaining modernization eligibility at that school site if less than 101 grants are available.

Supplemental Grants

The supplements are intended to recognize special costs associated with projects of a certain type or located in certain areas. The district also uses the Form SAB 50-04 to supply information related to the supplemental grants. There are many possible supplemental grants as follows:

- Elevators
- Energy Efficiency
- Fire Code Requirements
- Geographic Location
- Handicap Access and Fire Code Compliance
- Labor Compliance Program
- Project Assistance
- Rehabilitation
- Site Development for 50-Year-Old Buildings
- Small School High Program
- Small Size Projects
- Urban Locations, Impacted Sites, Security Requirements

The following is a brief explanation of the supplemental grants:

Elevators

If the DSA requires 2-stop elevators in the modernization project, the modernization grant will be increased by $87,121 for each two-stop elevator. The district must attach the DSA letter that requires the elevators be included in the project for handicap access compliance. The modernization grant will be increased by $15,680 for each additional stop required.[3] The grant amount will be adjusted annually using the Class B index.

Energy Efficiency

A supplemental grant is available to districts with projects that have increased costs associated with plan design and other project components for school facility energy efficiency. The facilities in the proposed project must exceed the nonresidential building energy efficiency standards as specified in Title 24, Part 6

[3] SFP Regulations, Section 1859.83(f), (1) and (3), "Excessive Cost Hardship Grant."

of the California Code of Regulations by at least 10 percent. Currently all energy efficiency funds have been exhausted. At the September 2006 SAB the remaining modernization energy funds were re-designated to fund the new construction energy projects.

Fire Code Requirements

The modernization grant will be increased for each pupil in a project that includes an automatic fire detection and alarm system. The current increase is as follows:

Modernization Grant increase—Automatic Fire Detection and Alarm System

CLASSIFICATION	GRANT INCREASE
Elementary	$104
Middle School	$104
High School	$104
Special Day Class—Non-Severe	$195
Special Day Class—Severe	$291

The amounts shown above are the 60 percent State share and are adjusted annually in the same manner as the Modernization Grant.

Geographic Location

A supplemental grant is available to districts with projects that are located in areas of California that are remote, difficult to access, or lack a pool of contractors. A district may qualify and request an augmentation to the modernization grant because of their geographic location.

Handicap Access and Fire Code Compliance

The excessive cost hardship grant for access compliance[4] is based on actual hard costs as reported by the district on the accessibility/fire code requirements checklist. These costs must be the minimum work necessary to receive approval from the Access Compliance Unit of the DSA and must be verified by the DSA and the OPSC. The grant is calculated by taking the difference of the verified actual hard costs and subtracting seven percent of the sum of the State and district share of the project's modernization base grant (when the Lease Purchase Program converted to the SFP, it was the intent that seven percent of the modernization base grant covered access compliance work). However, there is a cap that may not be exceeded.

If the construction costs of a modernization project exceed 50 percent of its replacement cost, the building must be brought into compliance with the current building code as part of the Title 24 requirements. Therefore, the maximum a district can receive for access compliance is the difference between the new construction base grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the modernization project's base grant.

The chart below illustrates how the excessive cost hardship grant cap is calculated based on one pupil grant, and how the seven percent is applied:

[4] SFP Regulations, Section 1859.83(f), "Excessive Cost Hardship Grant."

Calculation of Maximum Grant (Cap)—Based on One Elementary Pupil

STATE AND DISTRICT SHARE OF NEW CONSTRUCTION BASE GRANT AT 50 PERCENT	*subtract*	STATE AND DISTRICT SHARE OF MODERNIZATION BASE GRANT	*equals*	MAXIMUM GRANT ALLOWABLE FOR ACCESSIBILITY REQUIREMENTS
$8,081		$5,437		$2,644

This chart provides examples of the calculation of the excessive cost hardship grant:

Examples of Calculation of the Excessive Cost Hardship Grant

IF THE MINIMUM ACCESSIBILITY WORK VERIFIED BY DSA IS:		7 PERCENT OF STATE AND DISTRICT SHARE OF MODERNIZATION BASE GRANT		DIFFERENCE	EXCESSIVE COST @ 100 PERCENT
$2,000	*subtract*	$ 381	*equals*	$1,619	$1,619
$3,500	*subtract*	$ 381	*equals*	$3,119	$2,644 (cap)
$ 350	*subtract*	$ 381	*equals*	–$ 31	$ 0

Modernization projects that consist of replacement of buildings in like-kind instead of modernizing them will be eligible for an excessive cost hardship grant equal to three percent of the modernization base grant only.

Labor Compliance Program (LCP)

A labor compliance program, as specified by Labor Code Section 1771.5, must be initiated and enforced for each project funded wholly or in part from Propositions 47 or 55 funds if the Notice to Proceed was issued on or after April 1, 2003. Additional funding is provided for these projects. The LCP grant is calculated on a sliding scale as follows:

Labor Compliance Program Grant

IF TOTAL PROJECT COST IS...		THEN THE TOTAL LCP COST IS...
AT LEAST	UP TO	
$ 0	$ 1 million	$ 16,000
$ 1 million	$ 2 million	$ 16,000 plus 0.016 multiplied by the amount over $1 million
$ 2 million	$ 3 million	$ 32,000 plus 0.0025 multiplied by the amount over $2 million
$ 3 million	$ 4 million	$ 34,500 plus 0.0015 multiplied by the amount over $3 million
$ 4 million	$ 6 million	$ 36,000 plus 0.0032 multiplied by the amount over $4 million
$ 6 million	$ 8 million	$ 42,400 plus 0.0031 multiplied by the amount over $6 million
$ 8 million	$13 million	$ 48,600 plus 0.0046 multiplied by the amount over $8 million
$13 million	$18 million	$ 71,600 plus 0.0044 multiplied by the amount over $13 million
$18 million	$48 million	$ 93,600 plus 0.0042 multiplied by the amount over $18 million
$48 million	N/A	$219,600 plus 0.004 multiplied by the amount over $48 million

The State's share will be 60 percent of the above result.

Project Assistance

The SAB may provide additional project grants for project assistance to small school districts with enrollment of 2,500 pupils or less. The current additional grant of $2,755 may be used for costs associated with the preparation and submission of the SFP eligibility and funding applications, including costs related to support documentation such as site diagrams. The grant amount will be adjusted each year using the Class B index. The district can find the current amount on the OPSC Web site.

Rehabilitation

A district may apply for the rehabilitation of facilities that the SAB has determined are an imminent health and safety risk to the pupils, if the cost/benefit analysis to mitigate the problem and remain in the building is less than 50 percent of the current replacement cost. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project.

Site Development for 50-Year-Old Buildings

A supplement grant is provided for the purpose of upgrading existing utilities as necessary for the modernization of 50 year or older permanent buildings. Sixty percent of the estimated utility costs, up to a maximum of twenty percent of the Modernization Grants (pupil grant), are available. Allowable utility cost fall under five categories:[5]

- Water
- Sewage
- Gas
- Electric
- Communication systems

It is important to understand that site development costs have restrictions on their use. The district representative should consult the SFP Regulations and the OPSC project manager if he or she is unsure if a particular item is an allowable cost before including the work in the project.

If a district is requesting a supplemental grant associated with site development on the Form SAB 50-04, verification must be submitted to support the request. To assist in gathering the supporting detail, the OPSC has developed a Site Development Worksheet for Additional Grants that is located on the OPSC Web site. The district may use this worksheet or similar method to submit this information to the OPSC.

Small High School Program

The Small High School Program is a pilot program that will sunset on January 1, 2008. A supplemental grant is available for the reconfiguration of large high schools into small high schools. The reconfiguration must result in at least two or more small high schools. Each small high school created may receive a supplemental grant up to $500,000 for costs related to the reconfiguration.

Small Size Projects

A supplemental grant is available to districts with projects that house no more than 200 pupils. The grant is intended to provide additional funds to modernize core facilities and to make up for the lack of economies of scale for small projects. The modernization grant can be increased by 12 percent for a project that will house less than 101 pupils, or by four percent if the project will house over 100, but no more than 200 pupils.

5 SFP Regulations, Section 1859.78.7, "Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings."

Urban Locations, Security Requirements and Impacted Sites

Districts with projects in urban locations on impacted sites may request a supplemental grant if:

» The useable site acreage for the project is 60 percent or less of the site size recommended by the CDE based on current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.

Urban locations on impacted sites are generally in areas of high population density. Districts with projects on these impacted sites are also faced with extra security requirements. The supplemental grant provides funds for security fences, watchpersons, increased premiums for insurance for contractors, and storage or daily delivery of construction materials to prevent theft and vandalism. If a district requests grants due to these circumstances, the OPSC will verify the district's eligibility pursuant to the CDE Final Plan Approval letter.

If the above criterion is met, the urban supplemental grant is calculated on a sliding scale as follows:

Modernization Urban Grant Adjustment

IF...	THEN...
the useable acres are 60 percent of the CDE recommended site size, as described above...	the urban grant adjustment is 15 percent of the Modernization Grant and of the funding for small size projects† and new school projects*, and a 0.333 percent increase to the urban grant adjustment for each percentage decrease in the CDE recommended site size below 60 percent.

* SFP Regulations, Section 1859.83(b), "Excessive Cost for Projects that House No More than 200 Pupils (Small Size Project)"

District Project Contribution

Every modernization application is a joint funding effort between the local school district and the State though the SFP. The State grant is discussed in the section entitled "Modernization Grant", earlier in this section. The total State grant represents 60 percent of the total project cost, with the district contributing the remaining 40 percent of the necessary funding.

The district contribution may come from virtually any source. The sole exception is that when savings from another SFP project are used as match, it must be from a modernization project only. This restriction exists due to legal requirements pertaining to the bond funds, which the State uses as a program-funding source.

The district need not have the entire 40 percent local contribution on deposit at the time that the project approval is made. However, at the time of the project fund release, the district must certify that the district's matching share has been deposited in the County School Facility Fund; has been expended by the district for the project; or will be expended by the district prior to the Notice of Completion for the project. Thus the district has considerable flexibility in how the local share is arranged and contributed. The district representative should be aware, however, that regardless of when the share is contributed to the project, the district must be able to show at closeout that 40 percent of the expenditures on the project were from local sources. If the district is unable to demonstrate the 40 percent expenditure requirement has been met, the apportionment will be reduced.

Unable to Meet the Contribution

Districts that are unable to contribute all of the 40 percent local share of a project, can pursue financial assistance through the financial hardship provisions of the SFP. Districts must submit financial data to the OPSC for "pre-approval" of financial hardship status (see Section 10, "Financial Hardship") before submitting a funding application. In addition, this "pre-approval" enables districts to request a separate apportionment for design costs, if necessary.

SAB Approval Process

The SAB approval can either be an apportionment or "unfunded" approval, depending on the availability of funds for modernization. If there are no funds available, the project will be placed on a list of unfunded projects to await possible future funding.

Fund Release

After the funding application is apportioned by the SAB, the next step in the process is the actual fund release to the County School Facilities Fund for use by the district.

The SFP grant is processed for release when the district submits a *Fund Release Authorization* (Form SAB 50-05). The Form SAB 50-05 submitted by the district is an important document that cannot be altered or modified by the OPSC. Therefore, an improperly completed Form SAB 50-05 will be returned with a letter of explanation to the school district for correction.

When a properly executed form is received, the OPSC sends a School Facilities Fund Release notification to the district representative and county office of education. The notification indicates the type of grant released, amount, school district, application number, school name, and date processed.

It is important to understand that a Form SAB 50-05 must be submitted within 18 months of the SFP grant apportionment by the SAB, or the entire new construction or modernization adjusted grant will be rescinded without further SAB action. If this should happen, the pupils housed in the project will be added back to the district's eligibility and the district may re-file the application at any future time.

The Form SAB 50-05 can be downloaded from the OPSC Web site. The properly executed Form SAB 50-05 should be submitted to:

Office of Public School Construction
Accounting
1130 K Street, Suite 400
Sacramento, CA 95814

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Section 10

Financial Hardship

Introduction

Financial hardship assistance is available for those districts that cannot provide all or part of their funding share of a School Facility Program (SFP) project. In order to receive financial hardship assistance, a district must have made all reasonable efforts to raise local funding and must also demonstrate that it is unable to contribute all or a portion of the matching share requirement.

If the district meets the financial hardship criteria, it is eligible for financial assistance for new construction or modernization projects. It may also be eligible for a separate apportionment for the following:

» For new construction or modernization projects, an early apportionment for design costs.
» For new construction projects, an early apportionment for site acquisition.

A district seeking financial assistance must have an approved financial hardship status prior to submitting an *Application for Funding* (Form SAB 50-04) for either a new construction or modernization grant request. In order to obtain this approval the district must provide verification that a reasonable effort was made to meet the district's matching share requirement, and must have confirmation from the Office of Public School Construction (OPSC) that the district is unable to contribute the entire matching share requirement. When this is accomplished, the OPSC will recommend that the district be approved as a financial hardship and will send a 'pre-approval' letter to the district.

Qualifying for Financial Hardship Assistance

To apply for financial hardship, send a letter to the OPSC Financial Hardship Audit Unit stating why the district is requesting financial hardship. Along with the letter, the district must submit the following documents:

Documentation for Financial Hardship Application

LEGAL REQUIREMENT	FINANCIAL DOCUMENTATION REQUIRED
Levy maximum developer fee allowed	School Board Resolution regarding developer fees
Demonstrate local effort to raise revenues	Evidence of at least one of the following: • Debt level at 60 percent of bonding capacity • Total district bonding capacity less than $5 million • The district had a successful registered voter bond election for at least the maximum allowed under Proposition 39 within the previous 2 years. • Other evidence which demonstrates that all reasonable local efforts have been made as approved by the State Allocation Board (SAB)

continued on following page...

Documentation for Financial Hardship Application...

LEGAL REQUIREMENT	FINANCIAL DOCUMENTATION REQUIRED
Financial inability to contribute the match	Evidence that facility funds are not available: • Financial Hardship Project Worksheet • Financial Hardship Worksheet • Latest independent audit reports • Encumbrances • Expenditure reports • Listing of the district's unused sites • Forms SAB 50-01 and SAB 50-02 for "interim housing" deduction calculation for new construction projects only • Written estimation of interim housing needs

If the financial hardship package is incomplete, a letter will be sent to the district requesting the necessary documentation to make the request complete. If the requested information is not submitted in a timely manner, the request will be returned unprocessed. The district may re-file the request whenever the missing documents become available.

County offices of education do not need to provide documentation regarding developer fees or evidence of reasonable effort to raise local funds.

Financial Hardship Assistance Request

In order to qualify for financial hardship assistance, the school district must demonstrate that it has made all reasonable efforts at the local level. The district must also provide evidence that it is unable to pay all or a portion of the district's share of the project. The process of providing the required evidence is discussed in this section.

Evidence of Reasonable Effort to Fund Matching Share

As previously mentioned, the law requires that a district seeking financial hardship assistance must demonstrate that all reasonable efforts have been made to raise local revenues for the SFP matching requirement. The SAB has adopted regulations that set criteria to determine that this requirement is met. The district must be levying developer fees at the maximum rate justified by law and must verify it meets at least one of the following:

Bonding Capacity and Indebtedness Threshold. The current outstanding indebtedness of the district, at time of financial hardship request, is at least 60 percent of the district's total bonding capacity. A district with a total bonding capacity of less than $5 million meets this requirement regardless of the level of indebtedness. Outstanding indebtedness includes General Obligation Bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and Certificates of Participation (COPs) that was issued for capital outlay school facility purposes, on which the district is paying a debt service.

The required documentation needed is a certification from the county auditor controller stating the district's assessed valuation, outstanding indebtedness, and remaining bonding capacity.

Voter Bond Election. The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

The required documentation needed:

- Copy of ballot issue.
- Original bond election estimates that support the amount of bond for which the district sought election.
- Date of election; amount of bond; purpose of bond; percent of "Yes" vote on bond.
- Copy from County Auditor-Controller certifying the district's current bonding capacity and outstanding indebtedness.

County Superintendent of Schools. A county superintendent of schools automatically meets the reasonable effort. The County Superintendent must then complete a financial review to determine the level of financial assistance needed.

Other Evidence of Reasonable Effort. If the district does not meet the reasonable effort requirements outlined above, it may present to the SAB other evidence of reasonable efforts to fund its matching share. This can be done using a *School District Appeal Request* (Form SAB 189). This form and instructions for completing the form are available on the OPSC Web site. In addition to the completed Form SAB 189, the district must also submit updated Financial Hardship Worksheets for each fund within the Capital Project Funds and the latest independent audit report. If the hardship justification is approved by the SAB, the district may then file its request for financial hardship using the approved SAB item as evidence of having met the reasonable effort test to fund its matching share for its projects. The district must then submit all of the requested financial documents necessary for a final financial hardship review, as described in the table "Documentation for Financial Hardship Application" on page 71.

Financial Review

The OPSC will conduct an analysis of the district's financial information to verify that the district is unable to provide all or a portion of the necessary matching funds for an eligible project. The analysis will include the applicant's financial records including those maintained by the California Department of Education (CDE) and the county office of education. The review will determine whether available non-operational funds and savings from other SFP projects are sufficient to fund all or a portion of the matching share requirements on a project. See SFP Regulations, Section 1859.81, for more information on the financial review.

Financial Hardship Project Worksheet. This is used by the OPSC to estimate the district's share of the project. The district must submit a separate Financial Hardship Project Worksheet for each project for which it is requesting financial assistance. The worksheet can be found on the OPSC Web site.

Financial Hardship Worksheet. This worksheet is used by the OPSC to determine the amount of the cash contribution to be provided by the district. These worksheets are based on the latest independent audit report and then brought current to application date with subsequent transactions that have occurred in the funds. Detail of the expenditures made for the subsequent events must accompany this worksheet. If this is not submitted, all of the expenditures shown will be disallowed and deemed as "funds available".

On the worksheet, the district will identify restricted funds such as class size reduction, as well as the purpose for any restrictions on funds, and will identify all bonds and COPs authorized and sold to date of financial hardship request. If the district has unsold bonds or COPs, possible restrictions on the use of these funds should be noted.

Latest Independent Audit Report. The district's latest independent audit report is used by the OPSC to verify the financial condition of the district. The district must submit the entire audit report.

Developer Fee Information

The district must be levying developer fees at the maximum rate justified under law or have an alternative revenue source equal to or greater than the developer fee otherwise justified.[1] As evidence, please include a copy of the resolution from the district's school board authorizing the levying of the fee. If the district is not levying the maximum fee allowed by law in accordance with current statute, include a copy of the district's recent Implementation Study and/or the Needs Analysis to support the amount being levied or justification for an alternative revenue source.

If the district entered into an agreement with a city, county, or other government entity regarding developer fees, please submit a copy of that agreement. In addition, please submit documents showing the amount of fees that could have been collected during the time frame of the agreement versus the amount that was actually collected and shown as revenue for the district.

If the district received any benefit, building, land, etc., in lieu of developer fees please submit documentation regarding the "in lieu" received and the value of the developer fees that were negated due to the "in lieu" agreement(s). If the district did not enter into agreements regarding developer fees, please submit a statement to that effect.

The current developer fees can be found on the OPSC Web site at www.opsc.dgs.ca.gov. Developer fee amounts are adjusted every even numbered year at the January SAB meeting based on an index specified in law. In order to maintain financial hardship eligibility, districts must implement the new developer fee within six months after an index change.

Encumbrances. The district must provide contracts and all other documentation supporting any encumbrances or obligations the district is claiming. All funds identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

Interim Housing Deduction from Available District Funding. From the funds available as a matching contribution, the district may retain $28,709 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. In addition, from the funds available as a matching contribution, the district may also retain $28,709 per approvable portable toilet unit in each reporting period for the cost to provide interim toilet facilities for the currently unhoused pupils of the district. This amount is adjusted annually. The current amount can be found on the OPSC Web site.

If the district is requesting an "interim housing" deduction from available funds, it needs to submit in writing an estimation of the district's interim housing needs for the year. The interim housing deduction and any related expenditures will be audited in the future.

Expenditure Reports. The district must submit expenditure reports, *Summary of Expenditures and Construction Progress* (Form SAB 184) and *Detailed Listing of Warrants Issued by the District* (Form SAB 184A), for each project for which the district is requesting financial hardship. If no funds have been spent on a project, the district must submit a statement to that effect. The OPSC will review any prior apportionment and the expenditures reported. All expenditures above and beyond a prior apportionment will be considered as a matching contribution. The SAB will not reimburse the district for expenditures made prior to the financial hardship approval.

Listing of the District's Unused Sites. The district must submit a listing of the district's unused sites and intended use. If the district has no unused sites, submit a statement to that effect.

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[1] Education Code Section 17075.10.

Approval of Financial Hardship Assistance

Once the financial hardship review is complete, the OPSC will send a letter to the district stating the available funds and expenditures that will be considered available for match purposes. If the district disagrees with the OPSC's findings, the district may submit additional information for consideration. Once the district has been approved for financial hardship (has a pre-approval letter), the district may submit its Form SAB 50-04, for the projects and specific phases listed in the financial hardship approval letter.

When a district is approved for financial hardship, the approval is valid for six months. If, within the six months, the district wishes to submit additional applications or phases of a previously approved project, it must have a pre-approval letter for those additional specific projects or subsequent phases prior to filing the Form SAB 50-04. To obtain pre-approval within the six months, the district must submit a Financial Hardship Project Worksheet for the project along with expenditure reports. The district does not need to update other financial information unless the six month period is past.

If the district's request for financial hardship status is denied by the Board, the district may be eligible for rental payments of $2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation satisfactory to the Board that it is unable to afford the full rental amount.

Subsequent Financial Hardship Request

Once a district receives funding as a financial hardship, the district should be aware that for a period of three years, all capital facilities funding received by the district from any source will be considered available for the matching share on a future financial hardship request. The exceptions are:

- Approved interim housing expenditures;
- Funding to pay for multi-year encumbrances approved at the initial financial hardship approval;
- Funding that is transferred into a Special Reserve Fund and is used for the purpose of the Federal Renovation Program;
- School Facilities Needs Assessment Grant Program; or the
- Emergency Repair Program.

Renewal of Financial Hardship Assistance

If the district does not submit an *Application for Funding* (Form SAB 50-04) within six months of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status by submitting a new request for financial hardship status.

The district will need to update its financial information by providing all required documentation as listed in the table "Documentation for Financial Hardship Application" on page 71 .

Financial Hardship Review for Financial Hardship Projects on Unfunded List

If a district's project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

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Section 11

Facility Hardship Grant

Introduction

Under very limited circumstances, a need to replace or construct new facilities may exist for reasons other than enrollment growth. For instance, a classroom or support facility may no longer be safe to occupy due to a structural failure or other severe health threat. To address these unusual situations, the State Allocation Board (SAB) has developed a facility hardship grant. The purpose of the grant is to assist districts with funding where it has been determined that the district has a critical need for pupil housing because the condition of the facilities, or the lack of facilities, presents an imminent threat to the health and safety of the pupils.

By definition a facility hardship is an unusual, often unique situation. It is difficult to describe a "normal" process since each request must be reviewed and analyzed on a case-by-case basis. This section outlines the process, but by no means addresses all possible facility hardship situations. When a significant and serious threat exists to the health and safety of students or staff in any public school environment or if an existing facility has been destroyed by natural disaster, the district should contact the Office of Public School Construction (OPSC) project manager for guidance.

Eligibility for Facility Hardship Grants

To be eligible for a facility hardship grant the district must demonstrate that one of two conditions exists: facilities must be replaced due to an imminent health and safety threat, or existing facilities have been lost to fire, flood, earthquake or other disaster. If the district is to qualify for a facility hardship grant under one of these two conditions, the district wide enrollment must justify a continuing need for these facilities, pursuant to the School Facility Program (SFP) Regulation, Section 1859.82.

Replacement Due to Imminent Health or Safety Hazard

In this case, existing facilities must be replaced to ensure the health and safety of the pupils because of circumstances such as the following:

- The existing facilities have serious structural deficiencies, which must be repaired or corrected as specified by the Division of the State Architect (DSA); or
- An imminent hazard exists because the existing facilities are in close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission source; or
- There are existing traffic safety problems or the pupils live in a remote area and transportation to existing facilities is not possible or poses a serious threat to the health and safety of the pupils; or
- Environmental health hazards such as dangerous levels of mold contamination; or
- Other situations exist which pose a threat to the health and safety of the pupils.

A facility hardship approval to replace facilities is limited to the most severe instances of need. Clear demonstration is needed that the health and safety of the children is in jeopardy.

Documentation. Typical supporting documentation should be in the form of written statements/reports by a qualified industry expert or specialist appropriate for the specific area of concern. This documentation must then be reviewed and written concurrence provided by the appropriate State agency expert that has jurisdiction relating to the problem area. For example, air quality threats might involve a certified professional on staff at the State Department of Health; traffic problems might be supported by the California Highway Patrol, and so forth. If structural deficiencies are the basis of the health and safety threat, a licensed structural engineer's report is required that substantiates the structural deficiencies which were out of compliance with codes in place at the time of original construction. The structural report must be accompanied by a letter of concurrence by the DSA. In any case, the statement provided to the OPSC must indicate how the problem poses an immediate threat to the health and safety of the children. Refer to Appendix 2, "Potential State Agency Involvement" for possible contact information.

Cost/Benefit Analysis. If the district has substantiated a health and safety issue and wishes to replace existing facilities, a cost/benefit analysis must be prepared and submitted to the OPSC. The analysis should include only the minimum work necessary to mitigate the identified health or safety problems and compare these with the SFP standard for Current Replacement Cost. The cost/benefit analysis may include applicable site development costs.

If the request is for replacement facilities that are needed as a result of structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain the DSA's approval. The cost/benefit analysis must include a narrative of the structural deficiencies and a description of the repair approach required to perform the minimum work necessary to mitigate the health and safety threat to obtain DSA approval. The analysis must also include a detailed cost estimate for the minimum work necessary described in the narrative. "Soft costs" such as architect fees, testing and inspection may be included in the cost estimate as a separate line item but should not be included in the cost/benefit analysis. The analysis and detailed cost estimate must be signed by the authoring licensed design professional.

If the total cost to mitigate the health or safety problem and remain in the facility exceeds 50 percent of the current replacement cost of the facility, it can be considered for abandonment and replacement. However, if the cost to remain in the facility is less than 50 percent of the current replacement cost, the district may qualify for rehabilitation. A qualifying replacement project will receive 50 percent of the eligible cost. A rehabilitation project will receive 60 percent of eligible costs. For more information on rehabilitation, refer to Section 9, "Modernization Funding."

Facilities Lost or Destroyed as a Result of a Disaster

A district may apply for the replacement of school facilities that were lost or destroyed as a result of a disaster, such as fire, flood or earthquake, for the following facility types:

- Classroom or related facility
- Library/media center
- Multi-purpose room
- School administration
- Gymnasium
- Toilet

Qualifying facilities must be required to ensure the health and safety of the pupils and must no longer be useable for school purposes as recommended by the California Department of Education and approved by the State Allocation Board (SAB). The district is also required to demonstrate satisfactorily to the SAB that the facility was uninsurable or the cost of insurance was prohibitive.

Documentation. Supporting documentation for facility hardship requests for the replacement of lost or destroyed facilities would include the following:

- Photos and written verification from the appropriate expert that documents the loss or the extent of damage to the school facility.
- Copy of the district's insurance policy that documents the level and type of coverage provided.
- Written verification from the district's insurance carrier that documents the amount of funds that the district has and/or will recover as a result of the disaster.
- If the facility is damaged, as opposed to entirely destroyed, the district must submit a licensed structural engineer's report, as outlined in this section, illustrating the extent of the damage and that the facility poses an immediate threat to the health and safety of the students and staff. The district would also be required to submit a cost/benefit analysis, as outlined in this section, signed by the authoring licensed design professional. The OPSC requires the district submit the DSA's concurrence with the report.

Application and Approval Process

In addition to the documentation supporting the health and safety issue and the cost/benefit analysis, as applicable, all facility hardship requests must also include the following:

- An Application for Funding (Form SAB 50-04) completed as applicable to make the initial request for conceptual approval by the State Allocation Board for the specific facility hardship type.
- A School District Appeal Request (Form SAB 189) that summarizes the district's request for a facility hardship including how the condition presents an imminent threat to the health and safety of the students and staff.
- A plot diagram that indicates the overall site layout, the facilities designation of the buildings and square footage. The diagram should indicate the specific structures at the school site for which the facility hardship request is being submitted.

After the analysis of the report(s) and review of the cost by the OPSC, an item will be prepared for presentation to the SAB for consideration of conceptual approval. If the SAB approves the district's request for new or replacement facilities, the district is eligible for funding as a new construction project. The district can then proceed with hiring an architect in order to complete plans, obtain DSA approval, and apply for funding grants. A district that receives a conceptual approval has 18 months, or 24 months if a new replacement school site is required, to submit a complete funding application (including DSA plan approvals, cost estimates, etc.). Funding for a facility hardship is subject to the availability of funds.

Interim Housing

In the event of an emergency or for districts in need of short-term interim housing to meet their facility needs, districts may seek assistance from the OPSC. Our project managers will evaluate each request on a case-by-case basis and will work with districts to find them interim housing as the SAB has approved the phase out of the State Relocatable Classroom Program. If a district is in need of immediate facilities to replace those damaged by a natural disaster, the OPSC can administratively expedite the approval of new construction funding applications through the Natural Disaster Plan, which allows districts to purchase relocatable classrooms quicker to address their facility needs. Again, our project managers will assist districts with processing these type of applications to ensure facilities are received in a timely fashion.

References

» SFP Regulations, Section 1859.76, "Additional Grant for Site Development Costs."
» SFP Regulations, section 1859.82, "Facility Hardship Grant."
» SFP Regulations, Section 1859.83, "Excessive Cost Hardship Grant."

Section 12

Program Accountability

Introduction

The School Facility Program (SFP) has significantly increased program flexibility and responsibility at the local level, while reducing the State's oversight role. In general, the State's fiscal concerns are limited to verifying that the expenditures and certifications of program requirements made by the district for the project comply with the law, that the district followed applicable State requirements pertaining to construction and to verify that the project progresses in a timely manner as specified in statute. To assist with this oversight, a district is required to submit expenditure reports and evidence of progress during the construction of the project. On a project that requires less than a year to complete, only an expenditure report is required.

Progress Report

The SFP requires that an approved project be constructed within certain time frames. To ensure that this happens, evidence of progress is generally due after funds are released to the district for the project.[1] The specific evidence required and the timeframe for submitting such evidence depends on the type of funding received. The possible types of funding include Separate Design (Financial Hardship), Separate Site (Financial Hardship), Separate Site (Environmental Hardship), and/or Adjusted Grant. The following table defines the specific criteria for meeting the substantial progress requirement and indicates the filing time requirements based on the type of funding received.

[1] In cases where separate environmental hardship funds are involved, the due date is based on the apportionment date instead of the fund release date.

Substantial Progress Reports

FUNDING RECEIVED	EVIDENCE OF PROGRESS DUE DATE	EVIDENCE OF PROGRESS REQUIRED
Separate Design (Financial Hardship project only)	18 months from Fund Release	One of the following: • Submittal of a complete Adjusted Grant funding application package to the Office of Public School Construction (OPSC). • Submittal of a district certification that complete plans and specifications have been submitted to the Division of the State Architect (DSA). • Submittal of a complete Separate Site funding application package to the OPSC. Or: • Submittal of a narrative of evidence, satisfactory to the State Allocation Board (SAB), detailing why complete plans have not been submitted to the DSA.
Separate Site (Financial Hardship)	18 months from Fund Release*	Submittal of a progress report certifying that all of the following have been achieved: • Obtain the final site appraisal. • Complete all California Environmental Quality Act (CEQA) requirements. • Obtain final California Department of Education (CDE) site approval. • Obtain final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site. Or: • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.
Separate Site (Environmental Hardship)	12 months from the apportionment date or anniversary of conversion from Separate Site Financial Hardship, and on each subsequent anniversary if necessary.	Submittal of one of the following: • A progress report satisfying the same criteria set forth for Separate Site (Financial Hardship) funding. • A request for an extension (which is supported by written letters of concurrence from the Department of Toxic Substance Control (DTSC) and the CDE). • Other reasonable evidence of effort the district has made.
Adjusted Grant	18 months from Fund Release†	Submittal of a progress report certifying one of the following: • 75 percent of site development work necessary prior to construction is complete. • 90 percent of construction activities have been contracted for. • 50 percent of construction activities are complete. Or: • Submittal of a narrative of evidence, satisfactory to the SAB, detailing the circumstances (beyond district control) which precluded progress from being achieved.

* If toxic substance issues are delaying site progress, the district may convert the site apportionment to an Environmental Hardship apportionment. Environmental hardship projects may request annual extensions with appropriate substantiation.

† The progress-reporting requirement for Adjusted Grant funding can be suspended if one of the following occur before the reporting deadline:
- The district submits a Notice of Completion for the project. If more than one construction contractor is involved in the project, a Notice of Completion is required for each construction contract.
- The district submits an Expenditure Report (Form SAB 50-06), which shows that the project is substantially close to 100 percent completion.

Substantial Progress Audit

Upon receipt of the substantial progress report, the Office of Public School Construction (OPSC) will analyze the information and will notify the district within 60 days if it intends to recommend to the State Allocation Board (SAB) that the evidence submitted does not demonstrate substantial progress. If the OPSC does not respond to the district within 60 days of submittal, the OPSC concurs with the district that substantial progress has been made.

Expenditure Report

Throughout the construction period of a project, the district will file one or more expenditure reports. The first expenditure report is due one year after the first fund release or upon completion of the project, whichever occurs first. Additional expenditure reports are due annually from the date the first report is due until the project is complete. A project is considered complete when either of the following occur:

- The notice of completion for the project has been filed.
- Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

Preparing the Expenditure Report

A district submits a record of project expenditures by using the *Expenditure Report* (Form SAB 50-06). This form allows the district to report all expenditures from district and State funds in summary form. To support the Expenditure Report, the OPSC has developed an Expenditure Worksheet which is available on the OPSC Web site at www.opsc.dgs.ca.gov. The district is encouraged to use this worksheet to gather and record the expenditure detail and to accompany the Form SAB 50-06.

Expenditure Audit

Within two years of receipt of the final expenditure report from the district, the OPSC must initiate an audit of the expenditures. If the district is not notified by the OPSC within that time frame that an audit will be made, the expenditures submitted by the district and certifications made on the Forms SAB 50-04 and SAB 50-05 will be accepted. If the OPSC has notified the district that an audit will be made, the OPSC must complete the audit within six months, unless additional documentation requested from the district has not been received.

Eligible Expenditures

The following table lists those expenditures that are typically eligible costs under the SFP:

Eligible Expenditures

EXPENDITURE	NEW CONSTRUCTION	MODERNIZATION
Acquisition and installation of portable classrooms	✖	✖*
Acquisition and conversion of an existing government or privately-owned building, or privately-financed school building	✖	
Construction	✖	✖
Construction management	✖	✖
Demolition	✖	✖
Design	✖	✖
Engineering	✖	✖
Fire safety improvement		✖
Force account labor costs that comply with Public Contract Code	✖	✖
Furniture and Equipment (including telecommunication equipment to increase school security)	✖	✖
Identification, assessment, or abatement of hazardous asbestos		✖
Inspection	✖	✖
Labor Compliance Program oversight costs	✖	✖
Landscaping	✖	
Legal fees associated with the reviews of bid documents, securing a site, and site condemnation	✖	✖
Necessary utility costs	✖	✖
Plan checking	✖	✖
Playground safety improvements		✖
Purchase and installation of air-conditioning equipment and insulation materials and related costs	✖	✖
Replacement of portable classrooms		✖
Seismic safety improvements		✖
Site acquisition	✖	
Site development	✖	✖†
Testing	✖	✖
Upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology		✖
Utility connection and other fees	✖	✖

* Permissible if it is a like-kind replacement of a portable classroom.

† For 50 years or older modernization projects utilities work only, for permanent facilities, per SFP Regulations, Section 1859.78.7.

Site Closeout Reviews

Districts that obtain additional grants for sites that require hazardous waste removal substantiated by a Response Action will be eligible to receive up to 50 percent of one and one-half times the value of the site to monitor and clean the site. Additional costs beyond this new cap will be subject to provisions contained in section 1859.74.2 and following. For those projects where the *Application for Funding* (Form SAB 50-04), is received on or after January 1, 2004, additional costs beyond the cap are subject to adjustment whether or not the additional grants for hazardous waste removal were requested on the Form SAB 50-04.

Ineligible Expenditures

District representative should be aware that some expenditures are not permitted under the SFP. If the district representative is uncertain about a specific expenditure, the OPSC audit staff can assist the district accordingly.

The following is a list of the expenditures that may potentially be disallowed during an SFP final expenditure audit:

- Administrative and overhead costs.
- District force account labor that does not comply with the Public Contract Code.
- Modernization expenditures for:
  - *New building area that does not replace building area of "like kind."*
  - *New site development that is not for replacement, repair or additions to existing site development work.*
  - *Removal of hazardous waste from a modernization project that exceeds ten percent of the total modernization apportionment.*
  - *Costs on leased facilities unless owned by another district or county superintendent.*
  - *Acquisition and development of real estate.*
  - *Demolition costs not attributable to replacement of "like kind" building area.*
- Any expenditure that cannot be reasonably attributed to a project.
- Relocation costs that do not conform to Title 25, California Code of Regulations, Section 6000, et. seq. (see SFP Regulations, Section 1859.74(a)(1)).
- Expenditures associated with a "use of grant" (see SFP Regulations, Section 1859.77.2) SAB approval that were not constructed as specified in the original approval.
- Campus supervision that goes beyond construction site security.
- Expenditures on a financial hardship project that exceed the district's grant amount plus interest for the project.
- Interim housing expenditures associated with a new construction project subject to certain limitations.
- Relocation costs such as goodwill that is not court ordered, and the difference between the salvage value and new value of furniture and equipment costs when the business vendor retains the furniture and equipment.
- Legal fees not associated with securing a site and site condemnation, and contracts bid documentation.
- Expenditures associated with facility hardship SAB approvals that were not constructed as originally approved (see SFP Regulations, Section 1859.82).

References

- SFP Regulations, Sections 17074.25 and 1859.79.2 for modernization projects (Expenditures).
- As provided in SFP Regulations, Sections 1859.74, 1859.74.1 and 1859.75 (Site Acquisition).

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Section 13

Additional SFP Requirements and Features

Introduction

There are a number of topics related to the School Facility Program (SFP) that do not fit neatly into one of the other program sections. These topics are gathered here for easy reference. They may apply to new construction, critically overcrowded school facilities, joint use, and modernization or only to one program, as noted in the discussion.

General Information

Class B Index

The grant amounts in the SFP are adjusted each January based on the change in the Class B Index. This index is developed using cost data published by the Marshall Swift Company relating to buildings of primarily steel and concrete construction.

SAB Appeal Process

In some cases a school district's application may appear to be outside the standards of the SFP and the Office of Public School Construction (OPSC) is unable to recommend approval. When this occurs, a district can appeal directly to the State Allocation Board (SAB) using a *School District Appeal Request* (Form SAB 189). On this form, the district states why the SAB should grant the district's appeal based on law, regulation, or SAB policy.

Prior to the item being scheduled for SAB consideration, the OPSC will review and analyze the appeal as to legal issues, program impact, funding ramifications, and public policy considerations. Based on the evidence submitted by the district, the OPSC may support the district's request, deny the request, or provide alternative recommendations to the SAB. In any case, all of the recommendations made by OPSC to the SAB will be based on supporting laws, regulations, or legal opinions. Districts generally have a representative available at the SAB meeting to provide testimony, if needed. This process applies to all applications.

Change of Scope

The constant fluctuation of costs of materials and labor puts a great deal of pressure on school district staff who are planning construction projects, especially for financial hardship districts that do not have other funds available to cover cost overruns. Because SAB approval is based on the accompanying plans and specifications, there are limited circumstances where a SFP project may deviate from the scope of work outlined in the plans that were included with the application (see "Design with Flexibility in Mind" in Section 3, "Project Development Activities," for more information on this topic).

Additions

It is important to keep in mind that the project may not include the addition of area not proposed in the plans approved by the SAB. This applies to classrooms, MEF and non-classroom, non-MEF space. As stipulated in Regulation Section 1859.51(i)(5), the project may include the construction of more classrooms than needed to house the pupils requested in the application as specified, but these classrooms must have been in the plans submitted with the application. The flexible structuring of the bid documents will accommodate the districts' need to make decisions based on the bid results.

If the project is *non-financial hardship*, then any project savings may be retained and used for any high priority capital facilities needs or as part of the district's contribution to a future SFP project. This approach would provide an alternative method to later add facilities, if the district had not included the additional desired facilities in the plans for the project approved by the SAB. However, the law stipulates that classrooms provided by State or local funding shall be adjusted from the districts' SFP new construction baseline.

Reductions, Deletions or Modifications

Some flexibility is a recognized part of SFP construction projects. However, to continue with a project as approved by the Board, the original intent or project scope must be maintained. If modifications are considered by a district, it is critical that the affected State agencies be part of the process and that certain project requirements continue to be met. The State agencies are coordinating efforts in this area to assist districts when these situations arise. Some extenuating circumstances may be considered by the SAB, as outlined below.

Extenuating Circumstances

CHANGE PROPOSED	PROCEDURE
Deletion of Classrooms	Permitted if: • The capacity (based on the State loading standard) is sufficient to house the pupils requested in the application • CDE and DSA have approved the change • The project meets the 60 percent commensurate requirement
Reduction of MEF Area Facility remains but the square footage is reduced	Permitted if: • The remaining area proposed meets minimum MEF square footage requirements • DSA and CDE have approved the change • The project meets the 60 percent commensurate requirement • Original intent/purpose of project is maintained
Deletion of MEF Area New School Allowance may be reduced or eliminated	Permitted if: • Case-by-case review and approval by CDE • DSA has approved the change • Case-by-case consideration and approval by the Office of Public School Construction (OPSC)/SAB • The project meets the 60 percent commensurate requirement
Deletion of Non-Classroom, Non-MEF Area	Permitted if: • DSA and CDE have approved the change • The project meets the 60 percent commensurate requirement
Permanent to Modular Construction	Permitted if: • DSA and CDE have approved the changes • The project meets the 60 percent commensurate requirement • Original intent/purpose of project is maintained

Extenuating Circumstances...

CHANGE PROPOSED	PROCEDURE
Modular to Permanent Construction	Not permitted as part of the original project, because the project would receive an inequitable funding advantage due to the timing of the DSA plan approval. Districts may consider reapplication, so the desired type of construction can be built.
Changing the Placement of a Building i.e., site conditions discovered in the footprint of construction warrant building placement alteration; however, the building size and function does not change	Permitted if: • DSA and CDE have approved the change • Original intent/purpose of project is maintained

Project Savings

Districts that do not receive financial hardship assistance may retain project savings achieved by utilizing cost saving measures and efficient project management. A district may utilize these project "savings" for other high priority facility capital outlay purposes in the district.

Savings for Non-Financial Hardship Districts

Districts may expend the savings for any of its high priority capital facility needs. A district may also use the savings as a part of the match for other SFP projects, with the only requirement being that the district's share of the savings must be used towards a project of like kind. For example, the State's share of the savings on a new construction project may only be used to match another new construction project, and the State's share of the savings from a modernization project may only be used to match another modernization project.

Savings for Financial Hardship Districts

Any savings from a project that received financial hardship assistance must be used to reduce the financial hardship grant of that project or a future financial hardship project within the district. If the district has no other financial hardship projects, the savings must be remitted to the State within a period of three years. If the district has other projects and retains the savings amount, but the savings is not applied to another financial hardship within three years from the date savings is determined through audit, the savings amount plus interest earned must be returned to the State.

If the district spends more than the State grant plus district matching share, including earned interest on a financial hardship project, the district must do one of the following:

» Reduce the financial hardship contribution on that project by submitting the overspent amount; or
» Apply the overspent amount to reduce the financial hardship contribution on a future project within three years of project closeout; or
» Retain the overspent amount if a financial hardship application is not submitted for a period of three years from the date of the last financial hardship approval.

Restricted Maintenance Account

The SFP requires participating school districts to assure that a State funded project is kept in good repair. To meet this requirement, school districts must establish and maintain a restricted maintenance account within the district's general fund to be used for ongoing and major maintenance of school buildings. Each school district must publicly approve an ongoing and major maintenance plan that outlines the use of funds deposited into the maintenance account.

Each fiscal year and for a period of 20 years after receiving funds through the SFP, the district must deposit in the maintenance account no less than three percent of the district's total general fund budget. Unified school districts with an average daily attendance (ADA) of 1200 or less, elementary school districts with an ADA of 900 or less, and high school districts with an ADA of 300 or less may deposit less than the three percent minimum by certifying that the district can reasonably maintain its facilities with a lesser dollar level maintenance account.

Verification that districts have complied with this requirement will be made through the California Department of Education (CDE) at the time of audit and beyond, and will be based upon budget information submitted by the districts to the CDE.

Facilities Inspection System (Williams Settlement Requirement)

Beginning with the 2005/2006 fiscal year, school districts and county offices of education are required to establish a Facilities Inspection System (FIS) as a condition of participation in the School Facility Program, pursuant to Senate Bill 550 which modified Education Code, Section 17070.75(e). The requirements of the FIS are not defined in law other than to state the system should ensure that each school of the district or county office of education is maintained in good repair.[1] The design of the FIS should be determined at the local level. The one exception is for the school sites meeting the requirements of Education Code, Section 17592.70(b). The needs assessments conducted at these school sites are to be the baseline for the FIS (Education Code, Section 17592.70(d)(3)). To implement this requirement, the OPSC has included certification language on the *Application for Funding* (Form SAB 50-04), the *Application for Joint-Use Funding* (Form SAB 50-07), and the *Application for Charter School Preliminary Apportionment* (Form SAB 50-09).

References

» Education Code, Section 17070.75(a)
» SFP Regulations, Section 1859.91, "Implementation of Priority Points Due to Insufficient State Funds."
» SFP Regulations, Section 1859.92, "Priority Points for New Construction Projects."

[1] The Interim Evaluation Instrument, adopted on January 24, 2007 by the State Allocation Board, defines "good repair."

Appendix 1
State Agency Contact Information

Department of General Services

Office of Public School Construction (OPSC)
Mr. Rob Cook, Executive Officer
1130 K Street, Suite 400
Sacramento, CA 95814
916.445.3377 Tel
916.324.0623 Fax
www.opsc.dgs.ca.gov

Division of the State Architect (DSA)
Mr. David Thorman, FAIA, State Architect
1102 Q Street, Suite 5100
Sacramento, CA 95814
916.445.4167 Tel
916.324.0207 Fax
www.dsa.dgs.ca.gov

DSA Regional Offices

Los Angeles Basin
700 North Alameda Street, Suite 5-500
Los Angeles, CA 90012
213.897.3995 Tel

Sacramento
1102 Q Street, Suite 5200
Sacramento, CA 95814
916.445.8730 Tel

San Diego
16680 West Bernardo Drive
San Diego, CA 92127
858.674.5400 Tel

San Francisco Bay Area
1515 Clay Street, Suite 1201
Oakland, CA 94612
510.622.3101 Tel

California Department of Education

School Facility Planning Division
Ms. Kathleen Moore, Director
1430 N Street, Suite 1201
Sacramento, CA 95814
916.322.2470 Tel
916.322.3954 Fax
www.cde.ca.gov/facilities/

Department of Toxic Substances Control

Ms. Maureen Gorsen, Director
1001 I Street
Sacramento, CA 95814-2828
916.324.1826 Tel
www.dtsc.ca.gov

Department of Industrial Relations

Mr. John Rea, Acting Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
415.703.5050 Tel
www.dir.ca.gov

Appendix 2
Potential State Agency Involvement

This listing is only a sample of potential State agency involvement. There are many other agencies throughout the State that may become involved in the school construction process.

Potential State Agency Involvement List

AGENCY NAME/CONTACT INFORMATION	ROLE
California Energy Commission www.energy.ca.gov • Bright School Program Elizabeth Shirakh 916.654.4089	Helps schools identify ways to reduce energy use in school facilities.
Department of General Services **Office of Small Business Certification and Resources** www.pd.dgs.ca.gov/smbus • Disabled Veteran Business Enterprise Participation Program 916.375.4940	Provides a listing of certified DVBE firms. Note: The DVBE Program administered by the Department of General Services does not apply to school district's contracts.
Department of Health Services www.dhs.ca.gov • California Indoor Air Quality Program 510.620.2800	Provides assistance and training to school districts that have air quality problems.
Department of Transportation www.dot.ca.gov • District Transportation Planning Division 916.653.0913	Determines whether a school is likely to have an impact on the State transportation system or any of its facilities.
Office of Emergency Services Hazard Mitigation www.oes.ca.gov • Public Assistance 916.845.8200	Provides funds for school construction projects that reduce or eliminate future damage from disasters (seismic retrofit, modernization, flood control). Administer both federal and state funding for repair and replacement of eligible facilities damaged by a disaster event.
Office of Planning and Research www.opr.ca.gov • State Clearinghouse 916.445.0613 state.clearinghouse@opr.ca.gov	Distributes state required environmental documentation to various governmental agencies for review and comment as part of the CEQA process.

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Appendix 3
School Facility Program Required Forms

The following forms are used in conjunction with the School Facility Program (SFP). It is the user's responsibility to check the Office of Public School Construction (OPSC) Web site (SAB Forms) for the most current version of the form as older versions of the form may not be accepted.

» Enrollment Certification/Projection (Form SAB 50-01)
» Existing School Building Capacity (Form SAB 50-02)
» Eligibility Determination (Form SAB 50-03)
» Application for Funding (Form SAB 50-04)
» Fund Release Authorization (Form SAB 50-05)
» Expenditure Report (Form SAB 50-06)
» Application for Joint-Use Funding (Form SAB 50-07)
» Application for Preliminary Apportionment (Form SAB 50-08)
» Application for Charter School Preliminary Apportionment (Form SAB 50-09)

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Appendix 4
Services Matrix

During the planning, design, and construction of a school facilities project, many individuals and firms come together to contribute to the project in specific ways. Unless responsibility is assigned by law, the decision about who should perform a given task generally rests with the school district as owner. A lack of clarity regarding responsibilities may lead to a situation where a task is assigned to more than one individual or firm, creating a duplication of effort which can be wasteful and counterproductive.

The Services Matrix is the work of a small group formed by the Joint Committee on School Facilities. District representatives may wish to consult the matrix to determine all of the responsibilities to be assigned on a project and to avoid duplication of effort.

The Services Matrix attempts to accomplish four principle objectives:

- Identify those tasks in a typical school construction or renovation project which must be performed by specific team members.
- Identify the tasks which cannot be performed by certain team members.
- Identify tasks which may be assigned to any of several team members at the owner's discretion.
- Provide the owner with a tool for use in making decisions about task assignments and preparing contracts for services.

The Services Matrix addresses a project which has a construction manager as one team member. In projects where this is not the case, the tasks assigned to the construction manager could typically be performed by either the architect, inspector of record, or the owner.

Services Matrix: Pre-Design Phase

The Services Matrix addresses a project which has a construction manager as one team member. In projects where this is not the case, the tasks assigned to the construction manager could typically be performed by either the architect, inspector of record, or the owner.

	RESPONSIBLE PARTY					
TASK	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Design professional selection	●	✖	◗	✖	✖	✖
Master project schedule (concept thru occupancy) and schedule monitoring	●	◗	◗	✖	✖	✖
Complete district specifications and standards	●	◗	◗	✖	✖	✖
Existing record drawings	●	◗	◗	✖	✖	✖
Site surveys	●	◗	◗	✖	✖	✖
Soils investigation	●	◗	◗	✖	✖	✖
Hazard materials data, EIRs, etc.	●	◗	◗	✖	✖	✖
Appraisals	●	◗	◗	✖	✖	✖
Detailed written program	●	◗	◗	✖	✖	✖
Base sheets for "As builts" (existing buildings only)	◗	●	◗	✖	✖	✖
Site investigations to gather data on existing conditions	◗	●	◗	✖	✖	✖
Data collection/meetings with facilities staff	◗	●	◗	✖	✖	✖
Data collection/meetings with design committee	◗	●	◗	✖	✖	✖
Priorities for any additional funding	●	◗	◗	✖	✖	✖
Project budgets/cost analysis	●	◗	◗	✖	✖	✖
Preparation of Office of Public School Construction (OPSC) applications	●	◗	◗	✖	✖	✖
Investigation of Division of the State Architect (DSA) requirements/status	◗	●	◗	✖	✖	✖
Investigation of SFM requirements/status	◗	●	◗	✖	✖	✖
Investigation of California Department of Education (CDE) requirements	◗	●	◗	✖	✖	✖
Investigation of applicable requirements of local agencies having jurisdiction (i.e., health, fire, public works, utilities, etc.)	◗	●	◗	✖	✖	✖
Develop Information Management Plan	●	◗	◗	✖	✖	✖
Develop Cost Management Plan	●	◗	◗	✖	✖	✖

Matrix Key

- ✖ Party cannot be responsible
- ● Party is typically responsible
- ◗ Party may be assigned responsibility (Owner's choice)
- ■ Party must be responsible, task not assignable to others

Services Matrix: Design Phase

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Schematic Design Drawings	✖	■	✖	✖	✖	✖
Design Development Drawings	✖	■	✖	✖	✖	✖
Cost Estimating and Budget Tracking	◗	◗	●	✖	✖	✖
Value Engineering	◗	◗	●	✖	✖	✖
Preparation of Construction Document production schedule	◗	●	◗	✖	✖	✖
Master Project Schedule monitoring/reporting	◗	◗	●	✖	✖	✖
Preparation of final Construction Documents (drawings and technical specifications)	✖	■	✖	✖	✖	✖
Preparation of "boiler plate" Specifications (invitation to Bid, Proposals, General Conditions, Supplemental Special Conditions)	◗	●	◗	✖	✖	✖
Preparation of Alternate (Cost Adjustments)	✖	■	✖	✖	✖	✖
Quality Control and coordination of Construction Documents	✖	■	✖	✖	✖	✖
Preparation of OPSC application documents	●	◗	◗	✖	✖	✖
DSA Plan Review submittals and approvals	✖	■	✖	✖	✖	✖
Local Agency Plan Review submittal and approvals	✖	■	✖	✖	✖	✖
Independent Coordination and Constructibility Plan Review	◗	◗	●	◗	✖	✖
Maintenance and Operations Staff Plan Review	■	✖	✖	✖	✖	✖
Facilities Staff Plan Review	■	✖	✖	✖	✖	✖
Design Committee Plan Review	■	✖	✖	✖	✖	✖
Packaging of Documents for bidding	✖	✖	■	✖	✖	✖
OPSC Plan Review submittals and approvals	◗	●	◗	◗	✖	✖
California Department of Education Plan Review and approvals	◗	●	◗	◗	✖	✖
Coordinate results of various reviews, resolve conflicting comments	✖	■	✖	✖	✖	✖
Verify that all plan review issues are resolved	✖	■	✖	✖	✖	✖
Cash Flow projection reports	◗	◗	●	✖	✖	✖
Tracking OPSC funding status	●	◗	◗	✖	✖	✖
Construction Market Study	◗	◗	●	✖	✖	✖
Develop Contractor Work Scopes (Multi-Prime only)	✖	✖	■	✖	✖	✖
Prepare Cost Estimates by Work Scope (Multi-Prime only)	✖	✖	■	✖	✖	✖

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Services Matrix: Bid and Award Phase

TASK	RESPONSIBLE PARTY: OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Reproduction and distribution of Bid Documents	◗	●	◗	✖	✖	✖
Advertising and Legal notices	●	◗	◗	✖	✖	✖
Contractor marketing/bidder's interest campaign	✖	◗	●	✖	✖	✖
Contractor pre-qualification	●	◗	◗	✖	✖	✖
Pre-Bid meeting (Single Contact)	✖	●	◗	✖	✖	✖
Pre-Bid meeting (Multi-Prime Construction Management Contract)	✖	◗	●	✖	✖	✖
Answer bidder's questions/interpret bid documents	✖	■	✖	✖	✖	✖
Addenda	✖	■	✖	✖	✖	✖
Bid opening	●	◗	◗	✖	✖	✖
Recommendation for award to Owner	✖	●	◗	✖	✖	✖
Preparation of OPSC post-bid documents	◗	●	✖	✖	✖	✖
Draft and issue contract	●	◗	◗	✖	✖	✖
Review Contractor insurance and bonds	●	◗	◗	✖	✖	✖
Issue Notice to Proceed	●	◗	◗	✖	✖	✖
Prepare reports to District Bond Committee	●	◗	◗	✖	✖	✖
Public Relations activities/presentations	●	◗	◗	✖	✖	✖
Pre-construction meeting	◗	◗	●	◗	✖	✖
Contract Administration and coordination of multiple trade contractors (Multi-Prime Construction Management only)	✖	✖	■	✖	✖	✖
Continuous On-Site Supervision for Owner	✖	✖	■	✖	✖	✖
Continuous On-Site Supervision for Contractor	✖	✖	✖	✖	✖	■
Construction Schedule	✖	✖	✖	✖	✖	■
Monitor On-Site Safety Program	✖	✖	●	✖	✖	◗
Off-site construction permit acquisition	✖	✖	✖	✖	✖	■
Evaluations and approval of substitution requests	✖	■	✖	✖	✖	✖
Cash Flow projection reports	✖	◗	●	✖	✖	✖
Submittal/Shop Drawing Schedule	✖	◗	●	✖	✖	◗
Review and approval of Submittals/Shop Drawings	✖	■	✖	✖	✖	✖
Answering Requests for Information (RFIs)	✖	■	✖	✖	✖	✖

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Services Matrix: Bid and Award Phase...

TASK	RESPONSIBLE PARTY					
	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Tracking of RFIs	✖	◗	●	◗	✖	◗
Evaluation of Change Order requests—costs and/or time extensions	◗	◗	●	◗	✖	✖
Approval of Change Orders	✖	■	✖	✖	✖	✖
Tracking status of all Change Order requests	✖	◗	●	◗	✖	✖
Review/Observation of overall quality of Construction work	✖	●	◗	◗	◗	✖
Review/Observation of technical aspects of compliance with construction documents	✖	●	✖	◗	◗	✖
Review and Approve Contractor's solutions/recommendations for correction of observed non-conforming work	✖	●	✖	◗	◗	✖
Review of Contractor's Schedule of Values and Pay Requests	◗	◗	●	◗	✖	✖
Approval of progress payment requests	◗	●	✖	◗	✖	✖
Site/staff interface and coordination (at existing facilities)	◗	◗	●	◗	✖	◗
Coordinate interim housing (at existing facilities)	◗	◗	●	◗	✖	◗
Hazardous material inspection (at existing facilities)	■	✖	✖	✖	✖	✖
Means, methods and materials of construction	✖	✖	✖	✖	✖	■
Construction progress/site meetings	◗	◗	●	◗	✖	◗
Coordination of technical inspections and testing	✖	✖	✖	●	◗	◗
DSA required progress reports	◗	●	✖	◗	✖	◗
Coordination with DSA and SFM inspectors	✖	✖	✖	●	◗	✖
Resolution of Owner/Contractor disputes	●	◗	◗	◗	✖	✖
Scheduling of start-up, testing, adjusting and balancing of equipment	✖	✖	●	◗	✖	✖
Cleanup	✖	✖	✖	✖	✖	■
Preparation of Punchlist	◗	●	◗	◗	✖	✖
Punchlist work completion	✖	✖	✖	✖	✖	■
Punchlist of completed work	◗	●	◗	◗	◗	✖
DSA close-out documents	◗	●	◗	◗	◗	◗
OPSC close-out documents	●	◗	◗	✖	✖	✖
Documentation of "as built" changes to drawings	✖	◗	◗	●	✖	◗

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Services Matrix: Bid and Award Phase...

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	OWNER	ARCHITECT/ ENGINEER	CONST MGMT/ MULTI-PRIME	INSPECTOR OF RECORD	DSA	CONTRACTOR
Preparation on final "as built" drawings	✖	◗	◗	◗	✖	●
Occupancy/Fire Marshal	◗	◗	◗	●	✖	◗
Warranty, operation and maintenance certificates, documentations and materials	◗	●	◗	✖	✖	✖
Schedule training sessions for district maintenance staff	◗	◗	●	✖	✖	✖
Warranty inspection and report (prior to 12 month expiration)	●	◗	◗	✖	✖	✖

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Appendix 5

Summary of Bond and Deferred Maintenance Allocations

The programs, funding, and approvals over the period since 1990 are shown in the following table:

Summary of Bond Allocations

	NOVEMBER 1998	NOVEMBER 2002	MARCH 2004	NOVEMBER 2006	TOTAL
New Construction	$ 2,900,000,000	$ 6,250,000,000[1]	$ 4,960,000,000	$ 1,900,000,000[5,6]	$16,010,000,000
Modernization	2,100,000,000	3,300,000,000[2]	2,250,000,000	3,300,000,000[5]	10,950,000,000
Charter Schools	—	100,000,000	300,000,000	500,000,000	900,000,000
Career Technical Education	—	—	—	500,000,000	500,000,000
Overcrowding Relief	—	—	—	1,000,000,000	1,000,000,000
High Performance Schools	—	—	—	100,000,000	100,000,000
Hardship	1,000,000,000	—	—	—	1,000,000,000
Class-Size Reduction	700,000,000	—	—	—	700,000,000
Critically Overcrowded Schools	—	1,700,000,000	2,440,000,000	—	4,190,000,000
Joint Use	—	50,000,000	50,000,000	29,000,000	129,000,000
Total Bond Funds	$ 6,700,000,000	$11,400,000,000	$10,000,000,000[3]	$ 7,329,000,000	$35,429,000,000

[1] $14.2 million for energy efficiency.

[2] $5.8 for energy efficiency.

[3] $20 million for energy efficiency set aside for new construction and modernization.

[4] No more than $250,000,000 of the sum of the appropriations for new construction and modernization shall be used to fund the smaller learning communities and small high schools.

[5] Up to 10½ percent ($199.5 million) shall be available for purposes of seismic repair, construction, or replacement, pursuant to Education Code, Section 17075.10.

Summary of Deferred Maintenance Allocations (Millions of Dollars)

	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	TOTAL
Excess Repayments	$ 29.3	$ 25.7	$ 20.7	$ 18.1	$ 15.6	$ 14.0	$ 13.5	$ 276.4	$ 448.3
Legislation/Other Sources	137.6	143.7	176.1	176.3	208.0	85.5	254.0	8.0	1,289.2
Total	$ 166.9	$ 169.4	$ 196.8	$ 194.4	$ 223.6	$ 99.5	$ 267.5	$ 284.4	$1,737.5